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Rules and Regulations

Federal Register
Vol. 70, No. 24
Monday, February 7, 2005

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

RIN 0584–AD29

Food Stamp Program: High Performance Bonuses

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes amendments to the Food Stamp Program (FSP) regulations that were proposed in a Notice of Proposed Rulemaking (NPRM), ''Food Stamp Program High Performance Bonuses'', published on December 17, 2003 in the **Federal Register**. The NPRM proposed regulations that would implement section 4120 of the Farm Security and Rural Investment Act of 2002 (FSRIA) which authorized the Food and Nutrition Service (FNS) to award bonuses to States that demonstrate high or improved performance in administering the FSP. The NPRM proposed performance measures for the high performance bonuses for fiscal year (FY) 2005 and beyond. It also proposed the data that would be used to measure the identified performance. This final rule summarizes and discusses the comments we received as well as adjusts the regulatory language when necessary in response to those comments.

DATES: This final rule is effective April 8, 2005. The provisions of this final rule are required to be implemented no later than April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, FNS, 3101 Park Center Drive, Room 812, Alexandria, Virginia, 703–305–2515, or via the Internet at *Moira.Johnston@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

This final rule was determined to be significant, although not economically significant, and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP is excluded from the scope of Executive Order 12372. This Executive Order requires intergovernmental consultation with State and local officials regarding Federal financial assistance and direct Federal development. The Food Stamp Program is excluded because it is an entitlement program and benefits are provided directly to individuals.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the ''Dates'' paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect State and local agencies that administer the FSP, to the extent that they must implement the provisions described in this action.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Regulatory Impact Analysis

Need for Action

This final rule is needed to implement the provisions of Section 4120 of the FSRIA that authorized FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve the eligibility determinations and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures.

Benefits

State agencies will benefit from the provisions of this rule because they have the potential to be awarded bonuses for high or improved performance in administering the FSP.

Recipients will benefit from the provisions of this rule because, as the State agencies seek to improve their performance in determining eligibility, issuing benefits, and attracting and

retaining participants, their actions will positively affect applicants and participants.

Costs

The cost of implementing these provisions is $48 million each fiscal year, or $240 million over 5 years.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the NPRM, FNS received input from State and local agencies. Since the FSP is a State administered, Federally funded program, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding FSP implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other FSP rules. In addition, FNS solicited ideas at various State, regional, national, and professional conferences. FNS also consulted with State government representatives and our partners in the anti-hunger arena through meetings with such entities as the National Conference of State Legislators (NCSL), the National Governors Association (NGA), and the American Public Human Services Association (APHSA). Finally, we solicited comments on these amendments through the rulemaking process. The comment period for the NPRM opened on December 17, 2003 and closed on February 17, 2004. FNS received comments from 14 State or local agencies that administer the FSP, 3 interest groups, one university and one individual.

Nature of Concerns and the Need To Issue This Rule

Results of the consultations that were held prior to the publication of the NPRM were discussed in the preamble of that rule and therefore will not be discussed here. The comments that FNS received in response to the NPRM are discussed at length later in this preamble.

Extent to Which We Met Those Concerns

FNS considered comments on the NPRM prior to publishing this final rule. Our responses to these comments are discussed at length later in this preamble.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no adverse effect on any of the protected classes. The rulemaking is directed at State agencies and not applicants or recipients. If there were a trickle down effect on applicants or recipients, it would more than likely be positive and affect all applicants and recipients as this rulemaking includes incentives for State agencies to improve the eligibility determination and certification systems.

FNS has no discretion in implementing the law, which was effective upon enactment of the FSRIA on May 13, 2002. However, FNS does have discretion regarding the performance measures on which to base the awards. As discussed above, these performance measures are directed at State agencies. To the extent States act on these incentives, customer service and payment accuracy may improve. Therefore, FNS anticipates no adverse impact on any of the individuals eligible for food stamps and no disproportionate impact on any protected class.

In general, all data available to FNS indicate that protected individuals have the same opportunity to participate in the FSP as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the FSP from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status (FSP nondiscrimination policy can be found at 7 CFR 272.6(a)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. There are no revisions to information collections identified in this rule. This rule contains information collections that have been previously approved by OMB. The burden for the Quality Control Negative Case Action Review Schedule (FNS–245) is approved under OMB #0584–0034. The Quality Control Review Schedule (FNS–380–1) is approved under OMB #0584–0299. The Integrated Quality Control Review Worksheet (FNS–380) is approved under OMB #0584–0074. The State Coupon Issuance and Participation Estimates (FNS–388) is approved under OMB #0584–0081.

Government Paperwork Elimination Act (GPEA)

FNS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

II. Discussion of Comments

A. Background

Section 16(a) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2025(a), establishes the base administrative cost-sharing rate between the Federal Government and States at 50 percent. That is, pursuant to Section 16(a), FNS will typically reimburse half a State's costs incurred in administering the FSP. The Act, prior to enactment of the FSRIA, provided that a State agency would receive enhanced funding if it had a payment error rate less than or equal to 5.9 percent and a negative case error rate less than the national weighted mean negative case error rate for the previous year. State agencies and advocate groups expressed concerns that this incentive was too narrowly focused on payment accuracy and should be modified to also reward States for efficient management of the FSP in other areas.

On May 13, 2002, the enactment of FSRIA re-designed the quality control (QC) system, replacing enhanced funding with bonuses for States with high or most improved performance in administering the FSP, while significantly reducing liabilities assessed against States with poor accuracy outcomes.

On December 17, 2003, FNS published the NPRM titled ''Food Stamp Program High Performance

Bonuses'' (68 FR 70193) which proposed to implement the FSRIA high performance bonus provisions. Elimination of enhanced funding and changes in the liability system will be dealt with in a separate rulemaking.

Section 4120 of the FSRIA (Pub. L. 107–171) amended Section 16 of the Act (7 U.S.C. 2025) to authorize FNS to: establish performance measures relating to actions taken to correct errors, reduce rates of error, improve eligibility determinations, and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or most improved performance relating to the performance measures. Section 16(d)(2) of the Act (7 U.S.C. 2025 (d)(3)) provides that FNS must establish the performance measures through guidance for FY 2003 and FY 2004 and by regulation for FY 2005 and beyond. Section 16(d)(3) (7 U.S.C. 2025(d)(3)) prohibits a State from being eligible for a performance bonus payment any fiscal year for which it has a liability amount established. Section 16(d)(4) (7 U.S.C. 2025(d)(4)) provides that the amount of the bonus payment and whether or not to award such bonus payment is not subject to administrative or judicial review. Pursuant to Section 16(d)(2)(B)(ii) of the amended Act (7 U.S.C. 2025 (d)(2)(B)(ii)), FNS is to award the bonus payments in the fiscal year following the fiscal year of performance.

B. General Rule

1. Section 275.24

The NPRM proposed to establish a new section 7 CFR 275.24, High Performance Bonuses. Section 275.24 (a)(1) through (a)(7) of the proposal set forth the general guidelines for the high performance bonuses. We received several comments on these provisions. FNS will address each provision and the comments received individually.

2. Section 275.24(a)(1)

In the NPRM, section 275.24(a)(1) proposed that FNS would award bonuses totaling $48 million for each fiscal year to State agencies that show high or most improved performance. Section 275.24(b) proposed to make awards to 30 States in 7 categories: the lowest and most improved combined payment error rates ($24 million); the lowest and most improved negative error rates ($6 million); the highest and most improved participant access rates (PAR) ($12 million); and the best application processing timeliness rate ($6 million). It proposed that 50 percent, or $24 million, of the award money be allocated to payment accuracy based upon States' error rates, the sole criterion used under the previous enhanced funding.

One commenter generally disagreed with dividing the bonuses among a limited number of States. The commenter claimed that such a distribution was a disincentive because States could maintain a low error rate year after year and yet never qualify for a bonus. This commenter suggested that every State that strives to reach and maintain an acceptable performance level should receive a bonus. FNS does not believe that providing bonus funds to all States that attempt to maintain a certain level of error meets the intent of the legislation or that such an approach would be as effective as the proposed process.

One commenter suggested FNS use a composite ranking to determine the best overall State and make awards based on that ranking. FNS held many discussions with various stakeholders prior to drafting the NPRM. It was clear from these meetings that several individual performance measures were preferable over a composite measure. Because many stakeholders specifically mentioned this in those discussions, and because FNS received no other comments to this affect on the NPRM, FNS has decided to retain the structure of providing the awards based on individual performance measures.

Five commenters expressed dissatisfaction with the way FNS proposed to divide the money among the categories. Four of these commenters expressed concern that too much money had been allocated towards payment accuracy. One commenter argued that, while program integrity is important, there are other indicators of successful FSP administration that should be recognized and rewarded equally. This commenter recommended allocating more money towards rewarding States with high and improved PAR. Another commenter argued that the FSRIA intended to move away from a system that measured FSP performance solely via payment accuracy. This same commenter pointed out that while the FSRIA modified the quality control sanction system, the system remains in place and, due to the national average feature, a number of States would continue to be sanctioned every year. Therefore, this commenter found it inappropriate that FNS should emphasize payment accuracy in the high performance bonus system as well. This commenter recommended a more balanced division of the bonus money—awarding the majority to customer service measures. A third commenter argued that the QC system already imposes severe fiscal penalties on States that do not perform within acceptable standards. In addition, States are given incentives to focus on program integrity by keeping a share of the recipient claims they collect. This commenter argued that the purpose of the high performance bonus system was to provide a balance to the system. This commenter recommended that the best way to do this would be to allocate 70 percent of the $48 million to client service/access measures. A fourth commenter urged FNS to consider apportioning a larger share of the $48 million towards the customer service measures thus buttressing an emphasis on improving access.

One commenter suggested that FNS allocate even more towards payment accuracy—$30 million. This suggestion was not based on the importance of payment accuracy, but on the belief that less should be allocated for the PAR due to inaccurate data.

FNS maintains its conviction that allocating fifty percent of the total amount towards payment accuracy is appropriate. FNS is aware that the FSRIA intended to move away from awarding States solely on the merits of error rates. The last year of enhanced funding, FNS paid out more than $77 million in bonuses based on States' error rates. Therefore, allocating $24 million in performance bonuses based on payment accuracy is a significant reduction in money awarded to States based on error rates. At the same time, FNS believes it is important to allocate this amount to payment accuracy as it continues to be one of the Agency's highest priorities and of critical importance to Congress and the taxpayer. In addition, it is an established index that measures outcomes that are influenced by many aspects of FSP management, such as policies, training and customer service. FNS believes allocating more than $24 million towards payment accuracy would be excessive, as the other measurements are also significant. Therefore, FNS is retaining this provision to allocate $24 million towards payment accuracy.

3. Section 275.24(a)(2)

Section 275.24(a)(2) proposed awarding the bonuses no later than September 30th of the fiscal year following the performance measurement year. FNS received no comments on this specific provision. However, FNS did receive comments on how it relates to

awarding the bonus for the best and most improved PAR. These comments will be discussed later in the preamble. This provision is statutorily mandated (7 U.S.C. 2025(d)(2)(B)(ii)) and, therefore, we are adopting the proposed regulatory modification as final with no changes.

4. Section 275.24(a)(3)

Section 275.24(a)(3) proposed that a State agency would not be eligible for a bonus payment in any fiscal year for which it has a liability amount established. FNS received three comments opposing this provision. One commenter argued that this provision penalizes States that have made the greatest strides in addressing problem areas. This commenter suggested that, if a State against which a liability has been established wins an award, FNS should use the award to offset any liabilities. This commenter stressed that this would not only recognize improvement but serve as an incentive as well. Another commenter argued that awards for improvement should not be tied to a liability payment because improvement should be rewarded regardless of the national standard for payment accuracy. This commenter urged FNS to consider a legislative change. This commenter believes high achievement in customer service should be rewarded regardless of a State's payment accuracy rate. One commenter plans to seek a legislative change which would allow FNS to award bonuses to States even if they have been assessed a liability.

At this point in time, FNS is unable to modify this provision due to the statutory mandate of 7 U.S.C. 2025(d)(3). Therefore, FNS is adopting this provision as final with no changes.

FNS received one comment suggesting we modify the regulatory language to clarify that the only kind of liability that may render a State ineligible for a bonus is a penalty for an excessive QC payment error rate in the same year for which enhanced funding might otherwise be awarded. This commenter suggested that we articulate that this does not include leftover QC penalties due to a failed reinvestment plan or penalties for other deficiencies in FSP operations. This same commenter noted that the proposed rule does not clearly state that if a State is disqualified from receiving a bonus payment due to a QC penalty, the State with the next best performance will win the performance bonus just as if the disqualified State were a poor performer.

FNS agrees with this commenter and, therefore, is modifying the regulatory language at § 275.24(a)(3) to provide that a State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment and the State is not tied for a bonus, the State with the next best performance will be awarded a bonus payment.

5. Section 275.24(a)(4)

Section 275.24(a)(4) proposed that the determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review. FNS received no comments on this provision. This provision is statutorily mandated by 7 U.S.C. 2025(d)(4) and, therefore, FNS is adopting it as final.

6. Section 275.24(a)(5)

Section 275.24(a)(5) proposed that FNS divide the award money among the States in each category in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured). FNS received four comments on this provision, each arguing that this method is unfair to small States with small caseloads. Each of these commenters suggested that FNS establish a base amount for each award and then divide the remainder according to caseload size. This method, they argue, would provide more of an incentive for smaller States. Suggestions for the amount of the base award differed among commenters, from $150,000 in general to $1 million specifically in the payment accuracy category.

FNS recognizes that the proposed system is somewhat biased against smaller States, especially if a State with a small caseload wins in the same category as a State with a large caseload. Therefore, FNS is modifying the regulatory language at § 275.24(a)(5) to provide that FNS will award a base amount of $100,000 to each State agency that is an identified winner in each category. FNS will divide the remaining award money among the States in each category in proportion to the size of their caseloads.

7. Section 275.24(a)(6)

Section 275.24(a)(6) proposed that a State cannot be awarded two bonuses in the same category (payment accuracy, negative error rate, or participant access rate). If a State is determined to be the best and the most improved in a category, it would only be awarded a bonus for being the most improved. This allows the ''next best'' State to receive an award as being among the best States.

FNS received three comments on this provision. One commenter agreed with awarding a State only one award, but suggested that it be for the best and not for the most improved. This commenter reasoned that the State with the best performance should get the award for being the best, regardless of the degree of improvement. One commenter agreed with the proposal to recognize the State in the most improved category thus allowing the State with the next best performance to receive an award. This commenter reasoned that this method allows more States exhibiting outstanding performance to receive awards. This commenter also stated that recognizing and rewarding improvement is important, but it is more appropriate to give award money to States qualifying as the best. The third commenter suggested that FNS first calculate the monetary amount of the award for each bonus and then award the State in the category in which it would receive the higher bonus.

FNS is committed to awarding both high and improved performance in administering the FSP. FNS believes it is important to emphasize high performance. Therefore, FNS has decided to award a State that is a double winner (best and most improved) the award for being the best while at the same time acknowledging that the State also achieved in the most improved category. FNS will then award a bonus to the next State in the best category. FNS is not adopting the commenter's suggestion concerning awarding the State the highest monetary amount. FNS believes that the amount of the bonus award is secondary to the recognition a State receives.

8. Section 275.25(a)(7)

Section 275.24(a)(7) proposed that, where there is a tie to the fourth decimal point, FNS will add the additional State(s) into the category and the money will be divided among all the States. FNS received no comments on this provision and is adopting it as final with no changes.

9. Innovation

In the preamble of the NPRM, FNS specifically solicited comments on whether or not to include ''innovation'' as a measure of high performance and, if so, what criteria could be used to rank innovative projects. We received two comments suggesting we create a category for innovation. One commenter indicated that to be valid, results of a project need to be measurable (quantifiable) and repeatable among

other states; need to affect something important to the FSP; and need to be something an individual State can effect. One commenter strongly supported the idea of allocating money to reward State innovation, even if that pot of money is relatively small. This commenter recommended requiring States to apply for the award. This way, FNS would be able to collect information on innovative practices that it could then share with all the States. This commenter suggested that in the application the States answer the following questions: What problem did the State attempt to solve? Did the State work in partnership with other state agencies or non-profit groups to identify and resolve the problem? What quantifiable results are available to support the States' success? Is the idea exportable to other States?

FNS appreciates the comments concerning creating a performance bonus category for innovation. However, FNS received only two comments supporting this idea and has concluded that a determination of innovation would be too subjective. At the same time, FNS values the idea of collecting and sharing innovative ideas. Therefore, FNS is examining how best to do this outside of the performance bonus arena.

10. Additional Comments

FNS received two comments suggesting it include a performance measurement for Food Stamp Employment and Training (FSET) participation rate and most employed. One of the commenters put forth this suggestion because FSET is a major component of the FSP. The other indicated that this category would be an outcome measure that supports the goal of increasing family self-sufficiency rather than just an administrative process.

In drafting the policy for FY 2003 and FY 2004 and in drafting the NPRM, FNS did consider including a category for FSET. While FNS recognizes that this activity is important, it is not critical to the administrative performance of the FSP as outlined in the FSRIA. Furthermore, FNS does not have access to data that would be necessary for such a measure. Therefore, FNS is not adopting this suggestion.

C. Payment Accuracy

1. Section 275.24(b)(1)

Section 275.24(b)(1) proposed to divide $24 million (50 percent of the total amount) among the 10 States with the lowest and the most improved combined payment error rate (the error rate). Section 275.24(b)(1)(i) proposed awarding bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year. One commenter suggested that FNS award bonuses in the area of payment accuracy to the ten best and the ten most improved States. This commenter argued that such a method would provide a greater incentive to States and would represent FNS' highest priority and the State's ability to manage the FSP. One commenter argued that rewarding improvement is more important than rewarding the best and, therefore, FNS should award 12 States in this category: six States that are the best and six States that are the most improved.

FNS appreciates these comments. However, FNS believes that awarding 20 States in the area of payment accuracy would result in bonus amounts that would be so small they would reduce States' incentive. Furthermore, FNS believes that the proposed provision strikes a good balance by recognizing three States that improved the most while still providing the greater number of bonuses for the best performers. FNS will adopt this provision as final with no changes.

2. Section 275.24(b)(1)(ii)

Section 275.24(b)(1)(ii) proposed awarding the 3 States with the largest percentage point decrease in the combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year. FNS received four comments on this provision.

Two commenters suggested that States only get awards if States' error rates are at or below the national average payment error rate. The FSRIA provided no restrictions on awarding States for improvement, while it did provide for a restriction for awarding States with established liabilities. FNS views these awards as an incentive for improvement, especially for States with already high error rates. If FNS only awarded States that were at or below the national average, what incentive then would these bonuses serve for those States that have high error rates? Also, if States had significantly higher error rates than the national average, they very well may be in sanction mode and would be statutorily prohibited from receiving a bonus. Finally, FNS contends that States that are already at or below the national average can compete for an award in the ''best'' category. Therefore, while FNS appreciates the comments on this subject, FNS is not adopting the commenters' suggestion.

One commenter supported basing the award for most improved on percentage point decrease (absolute improvement). Another commenter disagreed with this suggestion. This commenter argued that it is much harder for a State with an already low error rate to improve by several percentage points and, therefore, States with a solid performance record and significant percentage improvement would not be rewarded. In addition, this commenter argued that the State with a lower error rate is costing the FSP less money. This commenter suggested that FNS measure percentage improvement (relative improvement) so all States have an opportunity to realize a performance bonus not just those that have high dollar errors.

FNS stands by the proposal to use percentage point improvement (absolute improvement) as the best means of measuring improvement. To illustrate, we will repeat the example given in the proposed rulemaking at 68 FR 70197: if State A has a 10 percent error rate in FY 2004 and a 6 percent error rate in FY 2005, it has shown an absolute improvement rate of 4 percent (the difference between 10 and 6) and a relative improvement rate of 40 percent (the percentage reduction from 10) If State B has a 6 percent error rate in FY 2004 and a 3 percent error rate in FY 2005, it has had an absolute improvement rate of 3 and a relative improvement rate of 50 percent. States that improve by more percentage points have more of an impact on the national FSP and on their own caseload than States that make a relative improvement. And, as discussed above, States that have already low error rates can compete for and very well may win in the ''best'' category. Therefore, we are adopting this provision as final with no changes.

D. Negative Error Rate

1. Section 275.24(b)(2)

Section 275.24(b)(2) proposed to divide $6 million among the 4 States with the lowest negative error rates and the 2 States with the most improved negative error rates. The negative error rate measures the correctness of the State agency's action to deny an application, or suspend or terminate the benefits of a participating household. It also measures whether a State correctly determined a household's eligibility in terms of the State's compliance with Federal procedural requirements.

One commenter recommended that the definition of a negative error be revised to exclude procedural issues

when the household is not eligible anyway, *e.g.* denying the case on the 29th day instead of the 30th. Negative cases are defined in 7 CFR 271.2 and the review procedures for negative cases are specified in 7 CFR 275.12 and the FNS Handbook 310, the Food Stamp Program Quality Control Review Handbook. Those procedures are based on certification policy. Revisions to quality control review policy are outside of the scope of this rulemaking. Therefore, FNS will not adopt the commenter's suggestion, but will consider the idea in future rulemaking.

2. Section 275.24(b)(2)(i)

Section 275.24(b)(2)(i) proposed to award bonuses to the 4 States with the lowest negative error rates based on validated quality control negative error rates for the performance year. One commenter supported this measure. One commenter questioned how FNS would validate the negative error rate from year to year to determine the most improved. This commenter pointed out that in the past the State's negative error rates have not been validated unless the State was below the national average for active reviews. This commenter questioned if the negative error rates would be validated for all States whether or not they have met the active error rate or would only the State's error rate be used. If the State's rate will be used, this commenter expressed concern that the results would be questionable if not validated. For several years, FNS has been validating all State agencies' negative case error rates because of concerns about the quality of the data and fair and equitable treatment of applicants. Although this comment is outside the scope of this rulemaking, FNS recognizes the merit of the comment and intends to continue to validate all State agencies'' negative case error rates.

3. Section 275.24(b)(2)(ii)

Section 275.24(b)(2)(ii) proposed to award bonuses to the 2 States with the largest percentage point decrease in their negative error rates based on the comparison or the performance measurements year's validated quality control negative error rates with those of the previous fiscal year. One commenter supported the idea of awarding States for improvement in the negative error rate but suggested it be a smaller amount of money than for the best. One commenter supported using percentage points versus percentage improved. One commenter opposed this method. This commenter suggested that awarding funds for improvement may result in States that have worked diligently to reach a low error rate losing to States that have had continuously high error rates. Again, as discussed above, FNS believes that States that improve by more percentage points have more of an impact on the national FSP and on their own caseload than States that make percentage improvement. Additionally, States that have already low error rates can compete for and very well may win in the ''best'' category. Therefore, we are adopting this provision as final with no changes.

4. Threshold

In the preamble of the NPRM, FNS specifically solicited comments on whether States must attain a certain threshold to be rewarded for an improved negative error rate. For example, should a State be rewarded if it improves its negative error rate from 20 percent to 15 percent, even though its negative error rate is still very high? One commenter suggested setting separate thresholds for groups of States created within each bonus category. These groups could be based on caseload, metropolitan area, and expenditure level. Alternatively, this commenter suggested setting no threshold because it could exclude those States whose improvement had the largest possible impact on the caseload, in terms of the number of cases positively affected. In addition, using a threshold for the most improved negative error rate would be incongruous since no such thresholds are used for the other most improved categories. One commenter supported awarding States for most improved even if their negative error rate was above the national average. At the same time, this commenter suggested that in lieu of the bonus money, we award these States special recognition.

Three commenters opposed awarding States for most improved when their negative error rates were above the national average. One commenter argued that it would not be fair to award a State for improvement when its negative error rate was still very high. A second commenter argued that since the entire purpose of the bonuses is to reward States for correct administration of the FSP, a State that is incorrectly denying or terminating more cases than the national average should not receive a financial award. A third argued that States that win awards for improvement in their negative error rate should be held to some basic level of performance. This commenter suggested that States should not be awarded for most improved if they are more than 30 percent above the national average for negative error rates. According to this commenter this approach is consistent with the statutory provision that disqualifies States from receiving a bonus payment if they are subject to a QC penalty in that fiscal year.

FNS views these bonuses as incentives for States to improve. However, FNS also recognizes that if a State has an excessively high negative error rate even after improvement, then it should not be rewarded. While the FSRIA did not provide for a restriction, FNS agrees with the comments. Therefore, FNS has decided to take a moderate position on this issue and provide that States that are more than 50 percent above the national average negative error rate may not receive a bonus in this category regardless of improvement.

E. Program Access Index

1. Section 275.24(b)(3)

Section 275.24(b)(3)(i) and (b)(3)(ii) proposed to divide $12 million among the 4 States with the highest and the 4 States with the most improved participant access rate (PAR). Section 275.24(b)(3)(iii) proposed to use a variety of data sources to calculate the PAR. FNS proposed that the denominator be composed of annual State counts of persons below 125 percent of poverty from the Census Bureau's March Supplement to the Current Population Survey (CPS). These counts are based on annual income received in the previous calendar year. For the numerator, or the number of food stamp participants, FNS proposed to use administrative counts of participants by State over the same calendar year as for the Census Bureau's persons below 125 percent of poverty, averaging 12 months of data. In addition, FNS proposed to make adjustments for two special situations. First, because persons receiving Supplemental Security Income (SSI) are ineligible for food stamps in California, FNS proposed to reduce the number of persons below 125 percent of poverty in California by the percentage of such persons who received SSI in the previous year. Second, because some individuals residing on reservations may choose to receive food assistance from either the FSP or the Food Distribution Program on Indian Reservations (FDPIR) but not both simultaneously, FNS proposed to add the number of FDPIR participants to the number of food stamp participants, using administrative data averaged over a calendar year.

2. Name Change

It has come to FNS' attention that there is a lot of confusion between the PAR and the official Participation Rate. FNS believes that part of the confusion is due to the similar names. In an attempt to distinguish this performance bonus measure from the official participation rate, FNS is changing the term Participant Access Rate (PAR) to the Program Access Index (PAI). Normally, ''rate'' is used to measure how often something occurs (food stamp participation) among all the times it could occur (food stamp eligibles). By changing this to an ''index'' FNS believes it will be clearer that it is relating a pair of numbers that are similar but do not have the same properties of a rate. Not all food stamp participants have low-income as defined in the denominator of the index, nor are all persons in the denominator eligible to participate.

3. Poverty Threshold

Section 275.24(b)(3)(iii) proposed to use 125 percent of poverty in calculating the PAI. This threshold differs from what FNS used for fiscal years 2003 and 2004 (100 percent of poverty). However, our analysis showed that using 125 percent of poverty better correlates to the official FSP participation rates. The official FSP participation rate uses 130 percent of income in the denominator. FNS looked at using 130 percent of poverty in the PAI but found that the data is not readily available from the Census Bureau and it would require time and additional expense to obtain the tabulations. In addition, FNS analyses found that using 130 percent in the PAI denominator versus 125 percent made no impact in the correlation to the official participation rates. As a result, FNS decided for efficiency and validity that using 125 percent of poverty in the PAI denominator was acceptable. FNS proposed in the preamble that, if the Agency could receive the estimate of individuals with income below 130 percent of poverty from the Census Bureau within a reasonable timeframe and the data better correlates to the official statistics, FNS would use numbers of people below 130 percent rather than 125 percent of poverty.

FNS received several comments on this proposal. Two commenters supported using 130 percent of poverty, stating it is more accurate. One commenter suggested we request a re-tabulation of data from Census. Two commenters, while not opposed to using 125 percent or 130 percent, proposed making adjustments for immigrants and individuals who live on reservations. Finally, one commenter suggested FNS not foreclose the possibility of Census providing data on the number of individuals with income below 130 percent of the poverty line in a timely fashion. This commenter suggested FNS craft the regulatory language so that FNS reserves the right to substitute the number of people below 130 percent for the number below 125 percent of poverty if the data is available in a timely manner. Comments related to ineligible aliens and undocumented immigrants will be discussed later in the preamble. FNS analyses show that a denominator using persons with income below 125 percent of poverty with certain adjustments produces a rate that best correlates to the official State participation rates. However, FNS does not want to preclude using 130 percent of poverty if that information should become available in time to calculate the PAI. FNS agrees that the final regulation should allow certain flexibility in improving the PAI calculation because of new and better data. Therefore, FNS is amending the proposed language to provide that FNS reserves the right to use the number of people below 130 percent of poverty should the data be available in a timely manner. Any such substitution would apply to all States.

One commenter expressed concern that the Census Bureau poverty counts appeared to be inaccurate for FY 2002 because, in one particular State identified by the commenter, the poverty count increased more than the State population, and because unemployment did not increase by as much in that State during that time period. FNS contends that in addition to population growth, there are several other factors that can affect the poverty count. Poverty can increase faster than unemployment if wage rates are not increasing or more workers are employed only part-time. The Census Bureau and FNS recognize the problems small entities have with uncertainty in the poverty estimates. However, FNS knows of no specific problem in that particular State and, moreover, knows of no other more reliable data source. Lacking better information or data, FNS will continue to use Census Bureau data on the count of people in poverty in each State.

4. American Community Survey versus the Current Population Survey

In the preamble to the proposed rule, FNS stated that since the American Community Survey (ACS) has a larger sample and is released earlier than the CPS, FNS was considering using data from that survey to calculate the PAI. However, since the survey was relatively new, FNS was going to examine the data over time to determine how well the PAI using ACS poverty counts correlated to the official FSP participation rate. If this data were more consistent, FNS would use it instead of the CPS.

FNS received several comments on this proposal. One commenter agreed that FNS should evaluate data from the ACS because of its larger sample size. One commenter suggested that FNS use whichever data source best correlates with the full Census. One commenter argued that neither data source was appropriate because they are both based on samples that do not accurately reflect the true extent of poverty, particularly in small jurisdictions subject to small sample sizes. One commenter urged FNS to use the ACS because it is a year-by-year supplement to the Decennial Census and is, therefore, more up-to-date, and because of its larger sample size.

FNS agrees that the national survey based on a sample is problematic for smaller jurisdictions. However, FNS knows of no other more reliable source of data available in a timely manner that could be used to calculate a measure of participation access that is comparable across all States and time. The CPS is made up of a scientifically selected sample designed to represent the civilian non-institutional population. While it does not pull a sample from every county in the country, it does statistically represent State populations. As it is planned, the ACS will have a much larger sample size than the CPS when fully implemented. FNS does not want to preclude using the ACS, especially if, when it becomes nationally representative, it proves to be a better source of data for calculating the PAI. Therefore, this final regulation provides that FNS will use the CPS, but reserves the right to use new and better data should it become available.

5. Determining the Number of Participants

Section 275.24(b)(3)(iii) proposed using State participation data, averaged over 12 months, to determine the number of participants. One commenter opposed using an average because it flattens out the actual increase in participation, especially for States that are actively conducting outreach activities throughout the year. This commenter suggested using the end results for the last month of the year (December). However, using participation in a single month like December is an advantage only when

caseloads are rising. When caseloads are decreasing, this would actually disadvantage some States.

Using an average smoothes out this effect. FNS chose average participation in the calendar year because the income data from the CPS, which is the basis for the count of persons with income below 125 percent of poverty, is available solely for a calendar year.

The Census Bureau does not collect monthly income in a large enough national survey to provide accurate monthly counts of persons with incomes below 125 percent of poverty by State. FNS is not adopting the commenter's suggestion and instead will continue to use an average 12 months of data based on a calendar year.

6. Making Adjustments

Section 275.24(b)(3)(iii) proposed that, to calculate the PAI, FNS would make adjustments for the SSI population in California and the FDPIR participants in States with reservations. FNS received several comments concerning the proposed adjustments. Several commenters proposed that, to improve the accuracy of the PAI, FNS should make adjustments for all those who are ineligible (such as immigrants or individuals who are not meeting the work requirements), or take into consideration other State specific situations that affect participation in the FSP such as the economy or urban versus rural populations. In addition, these commenters pointed out that FNS proposed to adjust differently for SSI recipients in California and individuals that received FDPIR. These commenters argued that since both populations are ineligible for the FSP they should be treated similarly. Several commenters suggested alternative ways to calculate the PAI, or that FNS seek a legislative change that would allow it to award these bonuses later so it can use the official participation rate.

FNS has decided not to change the method used to calculate the PAI or to adjust for such factors as ineligible individuals not addressed in the proposed rule (immigrants or individuals who are not meeting the work requirements), the economy, or rural versus urban populations with one exception. State-reported participation includes people provided benefits under special disaster conditions. FNS will subtract from the number of participants the state-reported number of people who received food stamp disaster assistance to better reflect on-going administration of the regular FSP. Disaster assistance is approved in limited circumstances and operates under special rules that differ from those of the regular FSP. FNS will subtract only those disaster assistance recipients who are new to the FSP—not existing participants who are issued replacement benefits. These individuals were not participating in the FSP under normal operations before the disaster. To the extent they apply and continue to participate under normal program rules in the following months, they are included in the count of participants.

FNS agrees with the comment that some adjustment should be made for FDPIR participants and SSI recipients in California, and that the adjustment approach should be consistent for both. Consistency could be achieved by either: (1) Adding the count of FDPIR and California SSI recipients to the numerator of the PAI, or (2) subtracting the count of low-income FDPIR and California SSI recipients from the denominator. Because the number of participants in FDPIR and California SSI recipients offers no information on the effectiveness of State food stamp agency operations, FNS believes it is preferable to exclude FDPIR and California SSI participants from the denominator of the PAI.

FNS will make this adjustment by using prior-year information from the CPS to estimate the number of California SSI recipients with income below 125 percent of poverty. Data limitations prevent a similar estimate of the number of FDPIR participants with income below the 125 percent of poverty. Therefore, FNS will subtract the average monthly number of FDPIR participants from the number of persons with income below 125 percent of poverty in each State. Although some FDPIR participants with incomes above 125 percent of poverty may qualify for benefits, FNS believes that the number will be relatively small.

We received one comment on the data used to remove SSI recipients in California from the denominator. This commenter suggested that since FNS is using Census data to determine the number of eligibles in the State, FNS should use Census figures to back out the SSI recipients from the denominator. In fact, the methodology proposed in the NPRM used Census data from the CPS to remove from the denominator the SSI recipients with incomes below 125 percent of poverty in California.

7. Additional Comments

One commenter urged FNS to clarify in the regulations how the PAI is calculated in order to ''ensure full transparency'' regarding distribution of funds and to make it more difficult for future Administrations to tinker with the formula without going through the public comment process. FNS agrees with this commenter that the regulations should be as complete as possible and believes that the regulations as written in this final rule are complete.

This same commenter suggested that FNS specify that the PAI is the share of eligible individuals in food stamp households who participate in the FSP. FNS would like to reiterate in the preamble that the PAI is the ratio of participants to persons with incomes below 125 percent of poverty, not eligible individuals. The official State participation rate is the ratio of participants to eligibles. FNS agrees and regrets that there is a lot of confusion over these two rates. Therefore, as discussed above, this measure will now be referred to as the Program Access Index.

F. Application Processing Timeliness

1. Section 275.24(b)(4)

Section 275.24(b)(4) proposed to divide $6 million among the 6 States with the highest percentage of timely-processed applications. One commenter supported the proposal to measure application-processing timeliness because it is an essential component of customer service.

2. Section 275.24(b)(4)(i)

Section 275.24(b)(4)(i) proposed collecting data on application-processing timeliness through the QC system. FNS initiated collection of data as part of the QC reviews beginning with FY 2003 cases. Instructions for collecting this information are found in the FNS 310 Handbook, The Food Stamp Program Quality Control Review Handbook. In the preamble to the proposed rule, FNS specifically sought comment on this data collection instrument and its ability to collect the sought after information. FNS received two comments regarding the data collection instrument. One commenter suggested we use different QC codes for the data collection instrument: 1. Timely; 2. Not timely—agency caused; 3. Not timely—client caused; 4. Application filed outside of fiscal year; and, 5. Unable to determine timeliness of application processing. FNS appreciates the merit of this comment. However, FNS has determined that there is no reason to change the codes since client-versus agency-caused delays is not relevant with regard to this measure.

One commenter opposed using QC data for this measurement saying it would result in inconsistent reporting.

This commenter cautioned that since the QC data collection instrument is new, States would be unfamiliar with it, and would, therefore, have many questions and may not report the data in the same way. This commenter suggested FNS modify the Program Activity Statement (FNS–366) to capture the data since States already have this procedure in place. This commenter felt that specific revisions to the FNS–366 form would result in more consistency since it is common to all States. FNS seriously considered using the FNS–366 form, but wanted to have a mechanism for validating these numbers. QC provides that mechanism. Therefore, FNS will verify the QC application processing data for any State that is in contention for a bonus.

3. Section 275.24(b)(4)(ii)

Section 275.24(b)(4)(ii) proposed that a timely processed application is one that provides an eligible applicant the ''opportunity to participate,'' as defined in 7 CFR 274.2, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard would be untimely for this measure, except for applications that are properly pended in accordance with 7 CFR 273.2(h)(1)(i)(C). Properly pended applications would not be counted for (as timely) nor against (as untimely) States' timeliness rate—they will be excluded from this particular calculation altogether.

One commenter argued that the measure as proposed does not fully capture the issue of timeliness and its importance in the delivery of food assistance. This commenter pointed out that this measure treats States with average processing times of 15 days the same as States with average processing times of 25 days and, thus, treating these States the same does not accurately reflect their performance with respect to timeliness. This commenter suggested we incorporate average processing time into the measure to provide States with an incentive to do better than simply meeting the statutory deadlines. FNS contends that average processing time can mask the effect of those States that process the bulk of their applications outside of the 30 days, but their average processing time is better than those States that consistently process their application within the 30 day standard. For example State X processes 100 applications, 20 in 31 days and the rest in 10 days, for an average of 14.1 days. State Y processes 90 applications in 20 days and 10 in 40 days, for and average of 22 days. FNS believes it is important that as many applicants as possible be served in a timely manner. Therefore, while FNS sees merit in using averaging, FNS believes that the timeliness rate as proposed is a more accurate measure and is adopting it in this final rule.

4. Client-Caused Delays

In the preamble of the NPRM, FNS specifically sought comment on whether to exclude all client-caused delays from this measure and, if so, how to work that into the existing reporting and QC framework. Two commenters opposed the proposal to measure timeliness against the statutory standard of 30 days from the date of application. These commenters suggested that we measure timeliness in accordance with the regulations at 7 CFR 273.2(h)(2)(i), which provide procedures for when the 30-day standard is not met (such as State and client-caused delays). Otherwise, a State following these regulatory procedures would be penalized for purposes of awarding the performance bonus even though all timeliness standards may have been complied with under Federal regulations. Excluding client-caused delays would also have a big impact on States with large immigrant populations and multiple languages as client-caused delays are considerably higher in such States than those without such populations. As discussed in the preamble to the NPRM, FNS recognizes that the statutory time frame differs from the latitude afforded by the regulations. However, FNS believes that excellent customer service should be measured by whether or not the statutory time frame of 30-day processing is met as opposed to compliance with the regulations that allows for up to 60-day processing in some cases. Furthermore, FNS believes all States are faced with challenges of serving applicants with one barrier or another (e.g., language and culture). Measuring application-processing timeliness against a 30-day standard, therefore, rewards States that take the extra steps to overcome these challenges.

Four commenters suggested excluding all client-caused delays from the measurement, not just those client-caused delays due to lack of verification. While FNS appreciates the merit of these comments, FNS believes that a State has the ability and the responsibility to influence clients' performance throughout the application process, such as helping to obtain verification, or accurately and adequately explaining the processing time frames and deadline dates. Again, this measure will reward States that go above and beyond to provide excellent customer service by providing needy individuals benefits in a timely fashion.

Two commenters agreed with the exception that applications that are properly pended because the applicant failed to provide verification should not count in the measure of overdue applications.

One commenter stated that States should not be held to a time frame of an application date for another program (such as TANF) when the client did not request food stamp benefits until a later date, perhaps during the interview for the other program. In this instance, the commenter suggested that the date of the interview should be the date the client requested food stamps. Existing FSP policy is that if an individual applies for another program but does not apply for the FSP until sometime later in the application process for the other program, then the date of application is the date that the individual applies for the FSP and not the other program.

5. Expedited Time Frames

Three commenters pointed out that the proposed rule does not address expedited time frames. One of these commenters questioned whether the policy regarding 30-day processing, which makes an exception for cases the State agency has pending due to incomplete verification, applied to expedited service cases. This commenter suggested that this policy be extended to all situations in which the client fails to comply with requirements necessary for agencies to meet the 7-day timeframe. FNS contends that the exception regarding failure to provide verification should not apply in cases that are entitled to expedited service. Verification requirements for expedited service cases are greatly reduced. The only information the State agency is required to verify in such cases is the identity of the head of the household. The State agency is not required to verify this information with paper documents, but may do so through a collateral contact. State agencies are encouraged to verify all other information prior to certification; however, they are permitted to postpone verification in the interest of providing food stamp benefits to destitute individuals. Therefore, since the probability of client-caused delays in expedited service cases due to failure to provide verification is minimal, FNS is not adopting the commenters suggestion.

Two commenters recommended that in cases of late determination for

expedited service, the 7-day time period be calculated from the date the agency discovers a household is entitled to expedited service and not the date of application. FNS believes that it is important to note that States are required to pre-screen applications to determine whether or not the applicant is entitled to expedited service. While all States face the challenge of accurately determining this need, those that do an excellent job in this endeavor or take the extra step to determine if a client is in dire need of nutritional assistance should be rewarded appropriately.

6. Section 275.24(b)(4)

Proposed § 275.24(b)(4) defined a timely-processed application as one that provides an eligible applicant the ''opportunity to participate,'' as defined in 7 CFR 274.2, within 30 days or 7 days for expedited processing. One commenter recommended that the ''opportunity to participate'' in the Electronic Benefit Transfer (EBT) environment be described. FNS recognizes that the ''opportunity to participate,'' as defined in 7 CFR 274.2, addresses systems that provide benefits in the form of food stamps or authorization documents as opposed EBT. However, revising that definition is outside of the scope of this rulemaking. Nevertheless, FNS has provided guidance delineating this term further, particularly in the EBT environment. Existing FSP policy regarding this performance measure is that the ''opportunity to participate'' consists of providing households with authorization documents (ATP cards), coupons, or EBT cards and having issuance facilities open and available for households to obtain their benefits. State agencies must mail or have EBT cards available for pick-up (and post benefits to the EBT account and provide all the training and PIN numbers) in time to assure that the recipient can access his benefits before the 30-day standard or 7-day standard expires.

Furthermore, in an EBT system, the client has the opportunity to participate:

- 24 hours after the client is notified by phone or in person to come into the office to pick up his card (assuming benefits are posted to the account, and the client has his PIN number or will be provided his PIN number when he comes in to get his card); or,
- Three days after he has been notified by mail to come in and pick up his card (assuming benefits are posted to his account, and the client has his PIN number or will be provided his PIN number when he comes in to get his card).

7. Approvals

In the preamble of the NPRM, FNS proposed that only approvals be included in the determination of timeliness since this measure is focused on meeting the 30-day and 7-day standards for providing eligible households the opportunity to participate. FNS received five comments on this proposal. Two commenters supported excluding denials from this measurement because an early denial is not an indicator of strong performance. Three commenters supported including denials in this measurement because it is important to advise households of denials as well as certification and it requires as much time. While FNS believes it is important to notify a client about denial of benefits in a timely fashion, FNS agrees that an early denial is not good if the applicant has not been provided sufficient time to provide the required documentation. FNS is not aware of problems with late denials, but also does not collect information on the timeliness of denials at this time. FNS will investigate the timeliness of denials with States and determine whether further data analysis and regular collection of data might be warranted. However, denials will not be included in this measure.

8. Section 275.24(b)(4)(iii)

Section 275.24(b)(4)(iii) proposed that QC reviewers evaluate for timeliness only new applications in the State QC active sample that were filed on or after the beginning of the fiscal year because they were filed within the performance measurement year for which the bonuses are awarded. Two commenters opposed this provision. One commenter expressed concern that the sample pool would be too small to yield valid program data. This commenter suggested that the sample be expanded to all active cases sampled during the fiscal year. One commenter pointed out that this method excludes clients who apply in August and September whose eligibility is not determined until October or later. This might bias timeliness determinations for states that experience increases in applications in the late summer. FNS has been monitoring the sample size based on the proposed policy and contends that it is large enough to be statistically valid. In addition, FNS believes that it is important to measure a State agency's performance within a fiscal year and, therefore, will retain the provision as proposed.

List of Subjects

7 CFR Part 272

Civil rights, Claims, Food stamps, Grant programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 275

Administration, Management evaluation reviews, Quality control reviews, Data analysis and evaluation, Corrective action, Responsibilities for reporting on program performance, Program performance.

■ Accordingly, 7 CFR Parts 272 and 275 are amended as follows:

■ 1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, add paragraph (g)(170) to read as follows:

§ 272.1 General terms and conditions.

(g) * * *

(170) Amendment No. 396. The provisions of amendment number 396 are effective April 8, 2005.

PART 275—PERFORMANCE REPORTING SYSTEM

■ 3. A new § 275.24 is added to read as follows:

§ 275.24 High performance bonuses.

(a) *General rule.* (1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment under this paragraph (a)(3), and the State is not tied for a bonus, the State with the next best performance will be awarded a bonus payment.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) In determining the amount of the award, FNS will first award a base amount of $100,000 to each State agency that is an identified winner in each

category. Subsequently, FNS will divide the remaining money among the States in each category (see paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or program access index (which is outlined in paragraph (b)(3) of this section). If a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best. The next State in the best category will be awarded a bonus as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year, as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rates based on the validated quality control negative error rates for the performance year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates, based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year, as determined in accordance with this part. A State agency is not eligible for a bonus under this criterion if the State's negative error rate for the fiscal year is more than 50 percent above the national average.

(3) *Program access index (PAI).* FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section. The PAI is the ratio of participants to persons with incomes below 125 percent of poverty, as calculated in accordance with paragraph (b)(3)(iii) of this section (the PAI was formerly known as the participant access rate (PAR)).

(i) *High program access index.* FNS will provide bonuses to the 4 States with the highest PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved program access index.* FNS will provide bonuses to the 4 States with the most improved PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative annual counts of participants minus new participants certified under special disaster program rules by State averaged over the calendar year. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's March Supplement to the Current Population Survey's (CPS) count of people below 125 percent of poverty for the same calendar year. FNS will reduce the count in each State where a Food Distribution Program on Indian Reservations (FDPIR) program is operated by the administrative counts of the number of individuals who participate in this program averaged over the calendar year. FNS will reduce the count in California by the Census Bureau's percentage of people below 125% of poverty in California who received Supplemental Security Income in the previous year. FNS reserves the right to use data from the American Community Survey (ACS) in lieu of the CPS, and to use the count of people below 130 percent of poverty, should these data become available in a timely fashion and prove more accurate. Such a substitution would apply to all States.

(4) *Application processing timeliness.* FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data to determine each State's rate of application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the ''opportunity to participate'' as defined in § 274.2 of this chapter, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

Dated: January 31, 2005.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 05–2260 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV04–932–2 FR]

Olives Grown in California; Redistricting and Reapportionment of Producer Membership on the California Olive Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule redefines the producer districts and reapportions each district's membership on the California Olive Committee (committee). The Federal marketing order for California olives (order) regulates the handling of canned ripe olives grown in California and is administered locally by the committee. This rule reduces the number of producer districts in the production area from four to two and reapportions the committee representation from each district to

reflect the consolidation. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should provide equitable committee representation from each district.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel L. May, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule consolidates the four existing producer districts into two larger districts. Producer representation on the committee is reapportioned accordingly. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should assure equitable committee representation from each district. This action was unanimously recommended by the committee at a meeting on July 8, 2004.

Section 932.21 of the order defines the producer districts as geographical areas of the State of California. Section 932.25 establishes an administrative committee of olive handlers and producers and provides for the allocation of committee membership to assure equitable producer representation from the districts. Section 932.35(k) authorizes the redefinition of the producer districts and the reapportionment of committee membership as needed to reflect shifts in olive acreage within the districts and area, numbers of growers in the districts, and the tonnage produced to assure equitable producer representation on the committee.

Currently, § 932.121 of the order's administrative rules and regulations lists and defines four producer districts within the production area. District 1 includes Glenn, Tehama and Shasta Counties. District 2 includes the counties of Mono, Mariposa, Merced, San Benito, Monterey, and all counties south thereof excluding Tulare County. District 3 includes the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof except those in District 1. District 4 includes Tulare County.

Section 932.125 specifies the producer representation on the committee. Currently, District 1 is represented by two producer members on the committee. District 2 is represented by one producer member. District 3 is represented by one producer member. District 4 is represented by four producer members.

At its meeting on July 8, 2004, the committee recommended redefining the producer districts to consolidate the four existing districts into two. The committee also recommended reapportionment of the producer membership on the committee to reflect the consolidation of the districts. The committee believes that redistricting and reapportioning the eight producer member positions and alternates should provide equitable representation throughout the production area. The committee based this recommendation on the current olive acreage and number of producers as required under the marketing order.

Total canned ripe olive acreage in the production area has declined by approximately four percent since 1994. Although production acreage in District 1 has increased by approximately 21 percent, shifts in varietal preference and challenging production conditions have led to declining acreages in the other districts. Production acreages in Districts 2, 3, and 4 have declined by approximately 34 percent, 99 percent, and 1 percent, respectively.

The number of producers in the entire production area has declined by approximately 23 percent since 1994. Some of the decline has been caused by changes in ownership of productive acreage, and some producers have stopped growing olives for cannery use. While District 1 has lost only two percent of its producers since 1994, Districts 2, 3, and 4 have lost 49 percent, 89 percent, and 29 percent, respectively. Some districts no longer have enough available or eligible producers to fill all the member seats currently allocated them on the committee.

Revisions to both the district definitions and committee membership apportionment were last made in 1987. At that time District 4 was created because Tulare County represented more than 45 percent of the average production, number of producers, and acreage of the entire production area. District 4 now represents approximately 56 percent of the canned ripe olive acreage as well as approximately 51 percent of the producers in the production area. District 4 is represented by 50 percent of the producer members and alternates on the committee.

Other districts are less equitably represented. District 1 currently has 36 percent of the total acreage in the production area and 46 percent of the producers, but is represented by only 25 percent of the committee's producer members and alternates. District 2, with nine percent of the acreage and two percent of the producers is represented by 12.5 percent of the committee members. District 3, with less than 1 percent of both the total acreage and number of producers is likewise represented by 12.5 percent of the

committee's producer members and alternates.

Recent shifts in production acreage as well as the decline in producer numbers in the districts prompted the committee to recommend the consolidation of the two northern districts into one producer district, and the two southern districts into one producer district. The shifts in production acreage and the declines in producer numbers reflect similar changes in the tonnage produced.

The committee believes that it should be easier for each district to provide equitable representation on the committee if the districts with declining acreages and producer numbers are combined with districts having higher acreages and producer numbers. The pool of available producers from which to select committee members should then be increased for each producer district.

Accordingly, it was proposed that Districts 1 and 3 be combined to form a new District 1. District 1 will then include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz and all other counties north thereof. Districts 2 and 4 will be combined to form a new District 2, which will include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all other counties south thereof. Producer representation on the committee will then be reapportioned to provide three members (and alternates) from District 1 and five members (and alternates) from District 2.

These changes should benefit producers by maintaining an equitable representation on the committee as to production acreage and number of producers in each district. Under this final rule, District 1, with 36 percent of the total production acreage and 47 percent of the total number of producers will be represented by 38 percent of the producer members and alternates on the committee. District 2, with 64 percent of the total acreage and 53 percent of the total number of producers will be represented by 62 percent of the committee's producer members and alternates.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions to ensure that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 850 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.601) defines small agricultural producers as those with annual receipts less than $750,000, and small agricultural service firms as those with annual receipts less than $5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities, but only one of the three handlers may be classified as a small entity.

This rule revises § 932.121 of the order's administrative rules and regulations pertaining to producer districts, and § 932.125 pertaining to producer representation on the committee. The changes decrease the number of producer districts from four to two and reapportion producer membership on the committee to reflect the consolidation. District 1, comprising the northern part of the production area, is apportioned three producer members (and alternates) on the committee. District 2, comprising the southern part of the production area, is apportioned five producer members (and alternates) on the committee. These changes reflect recent shifts in olive acreage and producer numbers within the production area and should provide equitable committee representation from each district. The committee unanimously recommended these changes.

This rule consolidates producer districts and reallocates producer membership on the committee; thus, there should be no additional anticipated costs to handlers or producers.

The only alternative to these changes discussed by the committee was to leave the districts and producer membership allocation as they currently exist. However, the committee believes that the recent shifts in acreage and producer numbers within the districts and production area have made these changes necessary to assure equitable producer representation from the districts.

This final rule imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports, and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the July 8, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 28, 2004 (69 FR 62829). Copies of the rule were mailed or sent via facsimile to all committee members and olive handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 27, 2004, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One comment generally opposed the program while the second indicated that the olive committee should be disbanded. However, neither comment added anything specific to the proposed rule. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information submitted by the committee and other available information, the comments received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because nominations for committee positions are scheduled to take place in February 2005. The committee needs as much time as possible to make adequate preparations for the nomination meetings. Further, producers and handlers are aware of this rule, which was recommended at a public meeting.

Also, a 60-day comment period was provided for in the proposed rule, and no comments were received from the California olive industry.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.121 is revised to read as follows:

§ 932.121 Producer districts.

Pursuant to the authority in § 932.35(k), commencing with the term of office beginning June 1, 2005, district means any of the following geographical areas of the State of California:

(a) District 1 shall include the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof.

(b) District 2 shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey and all counties south thereof.

■ 3. Section 932.125 is revised to read as follows:

§ 932.125 Producer representation on the committee.

Pursuant to the authority in §§ 932.25 and 932.35(k), commencing with the term of office beginning June 1, 2005, representation shall be apportioned as follows:

(a) District 1 shall be represented by three producer members and alternates.

(b) District 2 shall be represented by five producer members and alternates.

Dated: February 1, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2216 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV05–989–1 FR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2004–05 and subsequent crop years from $8.00 to $11.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The 2004–05 crop is smaller than normal, and no volume regulation will be implemented this year. As a result, some expenses funded by handler assessments will increase. The $8.00 per ton assessment rate will not generate enough revenue to cover expenses. The $11.00 per ton assessment will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 8, 2005.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate increased herein will be applicable to all assessable raisins beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established under the order for the 2004–05 and subsequent crop years from $8.00 to $11.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 2004–05 crop is

smaller than normal, and no volume regulation will be implemented this year. As a result, some expenses funded by handler assessments will increase. The $8.00 per ton assessment rate will not generate enough revenue to cover expenses. This action was recommended by the Committee at a meeting on October 5, 2004.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 989.79 also provides authority for the Committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the Committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining ''free'' percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins. Net proceeds are returned to the pool's equity holders, primarily producers.

When volume regulation is in effect, an administrative budget funded by handler assessments is developed, and a reserve pool budget funded by the current year's reserve pool is developed. Committee costs are apportioned between the two revenue sources. When volume regulation is not implemented, the Committee develops an administrative budget funded solely from handler assessments.

When the Committee met on August 12, 2004, it recommended two budget scenarios for the 2004–2005 crop year to accommodate both situations, because it was not known at that time if volume regulation would be implemented. At that time, it appeared the crop may be short, but the initial crop estimate would not be available until a later date.

The first budget scenario recommended was premised on the assumption that volume regulation would be implemented. Under this scenario, the Committee recommended an administrative budget of expenses totaling $2,200,000 and a reserve pool budget of $2,839,225. The assessment rate would remain unchanged at $8.00 per ton. This assessment rate applied to estimated acquisitions of raisins by handlers of 275,000 tons would provide adequate revenue to fund the administrative budget.

The second budget scenario recommended was based on the premise that volume regulation would not be implemented for the 2004–05 season. Under this scenario, various expenses typically split between the reserve pool budget and the administrative budget would be funded by the administrative budget. In addition, some expense categories would be eliminated, some reduced, and another would be allocated to the existing 2003–04 reserve pool budget. The administrative budget would increase to $3,025,000, thus necessitating an increase in the assessment rate to $11.00 per ton.

The Committee met on October 5, 2004, and determined that no volume regulation for the 2004–05 crop year was warranted because of a short crop. The crop estimate for Natural (sun-dried) Seedless raisins, the major raisin variety produced, was 199,344 tons. If realized, this would be the smallest crop in over 20 years. Production of other varietal types was also estimated to be relatively low. The lack of volume regulation triggered implementation of the Committee's recommendation for an administrative budget of $3,025,000 and an increased assessment rate from $8.00 per ton to $11.00 per ton.

In developing this budget, the Committee reviewed and identified those expenses that were considered reasonable and necessary to continue operation of the raisin marketing order program. Several costs normally associated with administering a reserve pool were eliminated, such as insurance coverage ($400,000), costs for repairing reserve storage bins ($300,000), raisin hauling costs ($65,000), auditing fees ($20,000), and bank charges ($20,000). Other costs usually split between the administrative and reserve pool budgets were also to be eliminated, such as production of industry brochures ($20,000) and research and communication activities ($70,000). It was determined that these activities, while desirable, could be eliminated without adversely impacting Committee operations.

Other expenses traditionally split between the reserve and administrative budgets were reduced. For example, total compliance activity costs budgeted at $500,000 ($250,000 allocated to the reserve budget and $250,000 allocated to the administrative budget) were reduced to $320,000, to be funded from the administrative budget. Purchase of equipment was also reduced, from a combined amount of $50,000, to $25,000 funded from the administrative budget.

Other costs usually split between the reserve pool and administrative budgets that will be funded by the administrative budget include general overhead costs such as salaries, taxes, retirement and other benefits, insurance, rent, office supplies, and Committee travel. These costs remain the same regardless of whether there is a reserve pool, as they are necessary to continue administration of the program. Finally, $836,000 in costs associated with administering export programs will be funded by the existing 2003–04 reserve pool budget, and $536,000 will be funded under the administrative budget for 2004–05.

A direct comparison of expenses between the recommended 2004–05 budget and the 2003–04 budget is difficult because the 2004–05 budget is only administrative, whereas in 2003–04 there was an administrative and a reserve pool budget. In total, the 2004–05 recommended administrative budget of $3,025,000 compares to the 2003–04 administrative budget of $2,000,000. However, the $3,025,000 administrative budget is $1,609,800 less than the combined 2003–04 administrative and reserve pool budgets of $4,634,800.

Major expense categories include $1,000,000 for salaries, $536,000 for export program activities (administrative budget only), $320,000 for compliance activities, $150,000 for group health insurance, $110,000 for rent, $120,000 for Committee member and staff travel, and $110,000 for computer software and programming.

A continuous assessment rate of $8.00 per ton has been in effect since the 2002–03 crop year. For the 2004–05 crop year, the Committee recommended increasing the assessment rate to $11.00 per ton of assessable raisins to cover recommended administrative expenditures of $3,025,000. The recommended $11.00 per ton assessment rate was derived by dividing the $3,025,000 in anticipated expenses by an estimated 275,000 tons of assessable raisins. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the

crop year must be credited or refunded to the handlers from whom collected.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2004–05 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2004–05 and subsequent crop years from $8.00 to $11.00 per ton of assessable raisins acquired by handlers. The 2004–05 crop is estimated to be smaller than normal, and as a result, the Committee determined that volume regulation for the season was not warranted.

When volume regulation is in effect, the Committee establishes two budgets; one for administrative expenses funded by handler assessments, and one for expenses incurred in connection with a reserve pool. Many of the Committee costs are split between the reserve pool budget and the administrative budget.

When no volume regulation is in effect during a crop year, there is no reserve pool budget for that crop year. However, the Committee continues to incur fixed costs associated with administering the marketing order program. Therefore, the Committee reviewed and identified the expenses that would be reasonable and necessary to continue program operations without a reserve pool in effect during the 2004–05 crop year. Operating expenses typically split between the administrative and reserve pool budgets were allocated to the administrative budget, some expenses were reduced, some expenses were eliminated, and some export program activity expenses were allocated to the existing 2003–04 reserve pool budget.

The resulting administrative budget recommended includes expenses totaling $3,025,000 for the 2004–05 crop year. While this is an increase from the 2003–04 administrative budget of $2,000,000, it represents a decrease in the 2003–04 combined administrative and reserve pool budgets which totaled $4,634,800.

Because the 2004–05 administrative budget funded some of the costs typically allocated to a reserve budget, a direct comparison to 2003–04 administrative costs would be difficult. A comparison of 2004–05 recommended administrative expenditures to combined 2003–04 administrative and reserve pool budget expenditures therefore follows: 2004–05 salaries, $1,000,000 (2003–04 combined budgeted expenditures for salaries was $1,000,000); $456,000 for export program activities, ($1,246,000); $320,000 for compliance activities, ($320,000); $150,000 for group health insurance, ($165,000); $110,000 for rent, ($106,000); $120,000 for Committee member and staff travel, ($120,000); and $110,000 for computer software and programming, ($107,800).

With anticipated assessable tonnage at 275,000 tons, sufficient income should be generated at the $11.00 per ton assessment rate to meet expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The industry considered an alternative assessment rate and budget prior to arriving at the $11.00 per ton and $3,025,000 administrative budget recommendation. The Committee's Audit Subcommittee met on July 1, 2004, to review preliminary budget information. The subcommittee was aware that the 2004–05 crop may be short and no volume regulation may be implemented. The subcommittee thus developed two budgets and assessment rates to accommodate a scenario with volume regulation and another scenario with no volume regulation. If volume regulation was to be implemented, the assessment rate would remain at $8.00 per ton. If volume regulation was not implemented, costs typically allocated to a reserve pool budget would be absorbed by the administrative budget, thus necessitating an increased assessment rate to $11.00 per ton. The Committee approved these budget and assessment recommendations on August 12, 2004.

The Committee met again on October 5, 2004, and determined that volume regulation was not warranted for the season. This triggered implementation of the Committee's recommendation for an administrative budget of $3,025,000 and assessment rate of $11.00 per ton.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. A grower price of a minimum of $1,210 per ton for the 2004–05 crop raisins has been announced by the Raisin Bargaining Association. If this price is realized, assessment revenue will continue to be less than one percent of grower revenue in the 2004–05 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action will increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee

meetings held on July 1, 2004, and August 12, 2004, respectively, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 10, 2004 (69 FR 71753). Copies of the proposed rule were also mailed or sent via facsimile to all raisin handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending December 20, 2004, was provided to allow interested persons to respond to the proposal.

One comment was received in reference to the proposal. The comment did not address anything specific to the proposed rule. No changes are made to the final rule in response to the comment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the recommendation and information submitted by the Committee and other available information, the comment received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the marketing order requires that the rate of assessment for each crop year apply to assessable raisins handled during such period. The crop year began on August 1, 2004, and the harvest is completed. The Committee needs additional revenues to meet its ongoing expenses. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule, and no comments from the California raisin industry were received.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2004, an assessment rate of $11.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: February 1, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2217 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 05–02]

RIN 1557–AC93

OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Appendix to regulations; final guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing, as an appendix to part 30 of its regulations, guidelines concerning the residential mortgage lending practices of national banks and their operating subsidiaries (Guidelines) as a further step to protect against national bank involvement in predatory, abusive, unfair, or deceptive residential mortgage lending practices. The Guidelines describe particular practices inconsistent with sound residential mortgage lending practices. They also describe other terms and practices that may be conducive to predatory, abusive, unfair, or deceptive lending practices, depending on the circumstances, and which, accordingly, warrant a heightened degree of care by lenders. In addition, the Guidelines address the steps that banks should take to mitigate risks associated with their purchase of residential mortgage loans and use of mortgage brokers to originate loans. The Guidelines focus on the substance of activities and practices, not on the creation of policies. The standards contained in the Guidelines are enforceable pursuant to section 39 of the Federal Deposit Insurance Act and the implementing process set forth in part 30 of the OCC's regulations.

EFFECTIVE DATE: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Guidelines, contact Michael Bylsma, Director, Community and Consumer Law Division, (202) 874–5750, Michele Meyer, Special Counsel, Legislative & Regulatory Activities Division, (202) 874–5090, or Rick Freer, National Bank Examiner, Compliance, (202) 874–4428, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

National banks are authorized by statute to engage in real estate lending activities, subject to the requirements of Federal law,[1] and national banks' real estate lending is closely supervised and comprehensively regulated under a regulatory framework that includes a wide variety of Federal laws and regulations designed to ensure the protection of consumers of banks' residential mortgage products and services.[2]

Fair treatment of customers is fundamental to sound banking practices

[1] 12 U.S.C. 371(a); and see 12 CFR part 34 (OCC rules governing real estate lending and appraisals implementing 12 U.S.C. 1828(o)).

[2] Federal consumer protection laws and regulations that apply with respect to the residential real estate lending activities of national banks and their operating subsidiaries include: the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*; the Home Ownership and Equity Protection Act, 15 U.S.C. 1639 *et seq.*; the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*; the Real Estate Settlement Procedures Act, 12 U.S.C. 1261 *et seq.*; the Flood Disaster Protection Act, 42 U.S.C. 4001 *et seq.*; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, as recently amended by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 111 Stat. 1952; the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*; and the privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*

and the OCC has taken a number of measures in recent years to assure that the lending practices of national banks reflect that standard. In particular, in February, 2003, we issued two advisory letters alerting national banks to practices that may be considered predatory or abusive and advising national banks on measures to avoid such practices. The advisories addressed national banks' mortgage origination activity, as well as purchases of loans and use of third-party brokers to conduct mortgage lending.[3] In January, 2004, we added to our rules an express prohibition on making mortgage loans based predominantly on the bank's realization of foreclosure or liquidation value of the collateral, without regard to the borrower's ability to repay the loan according to its terms, a prohibition that goes to the heart of predatory lending. In that same rulemaking, we also added provisions prohibiting banks from engaging in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.[4] In addition to establishing standards by regulation and in guidance, our overall approach includes taking prompt enforcement action to remedy abusive practices if we find that they have occurred.[5]

In order to enhance our ability to apply the guidance described in our February, 2003 advisory letters, we are now adopting the core elements of that guidance in the form of guidelines for residential mortgage lending standards, in a new Appendix C to part 30 of our regulations. These standards further the OCC's goal of ensuring that national banks and their operating subsidiaries are not involved directly or indirectly through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices. The Guidelines incorporate and implement the principles of, but do not replace, the February, 2003 advisory letters. The advisories remain in effect as supervisory guidance that provides supplemental context and explanation of the issues addressed in these Guidelines. Like the advisories, the Guidelines apply to national banks and, pursuant to OCC regulations, to their operating subsidiaries.[6] The Guidelines focus on the substance of activities and practices, not on the creation of policies. The Guidelines are enforceable pursuant to the process provided in Section 39 of the Federal Deposit Insurance Act (FDIA) and part 30.

Enforcement of the Guidelines

The OCC is issuing these Guidelines pursuant to Section 39 of the FDIA.[7] Section 39 authorizes the OCC to prescribe safety and soundness standards in the form either of a regulation or guidelines. These standards currently include, among others, operational and managerial standards for insured depository institutions that relate to internal controls, information systems, and audit systems; loan documentation; credit underwriting; interest rate exposure; and asset growth. Section 39 also provides, without qualification, that ''each appropriate Federal banking agency'' may prescribe ''such other operational and managerial standards'' as it ''determines to be appropriate.''

Section 39 prescribes different consequences depending on whether the standards it authorizes are issued by regulation or guidelines. Pursuant to Section 39, if a national bank fails to meet a standard prescribed by *regulation,* the OCC *must* require it to submit a plan specifying the steps it will take to comply with the standard. If a national bank fails to meet a standard prescribed by *guideline,* the OCC has the discretion to decide whether to require the submission of such a plan.[8] Issuing these residential mortgage lending practices standards by guideline rather than regulation provides the OCC with the flexibility to pursue the course of action that is most appropriate, taking into consideration the specific circumstances of a national bank's noncompliance with one or more standards, and the bank's self-corrective and remedial responses.

The Guidelines incorporate key provisions of the February, 2003 advisory letters and describe certain practices the OCC believes are inconsistent with sound residential mortgage lending practices. They also describe other terms and practices that may be conducive to predatory, abusive, unfair, or deceptive lending, and which, accordingly, warrant a heightened degree of care by lenders. The Guidelines thus incorporate the central principles and considerations contained in the February, 2003 advisories into a framework that specifically provides for their enforcement on a case-by-case basis under the framework provided by Section 39 and part 30 of our regulations.

The enforcement remedies prescribed by Section 39 are implemented in procedural rules contained in part 30 of the OCC's rules. Under these provisions, the OCC may initiate the part 30 process when we determine, by examination or otherwise, that a national bank has failed to meet the standards set forth in the Guidelines.[9] Upon making that determination, we may request, through a supervisory letter or in a report of examination, that the national bank submit a compliance plan to the OCC detailing the steps the bank will take to correct the deficiencies and the time within which it will take those steps. This request is termed a Notice of Deficiency. Upon receiving a Notice of Deficiency from the OCC, the national bank must submit a compliance plan to the OCC for approval within 30 days.

If a national bank fails to submit an acceptable compliance plan, or fails materially to comply with a compliance plan approved by the OCC, the OCC may issue a Notice of Intent to Issue an Order pursuant to Section 39 (Notice of Intent). The bank then has 14 days to respond to the Notice of Intent. After considering the bank's response, the OCC may issue the order, decide not to issue the order, or seek additional information from the bank before making a final decision. Alternatively, the OCC may issue an order without providing the bank with a Notice of Intent. In such a case, the bank may appeal after-the-fact to the OCC and the OCC has 60 days to consider the appeal and render a final decision. When the OCC issues an order, a bank is deemed to be in non-compliance with part 30.

[3] OCC Advisory Letter 2003–2, ''Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices'' (Feb. 21, 2003) and OCC Advisory Letter 2003–3, ''Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans'' (Feb. 21, 2003).

[4] 69 FR at 1917 (to be codified at 12 CFR 34.3). Through amendments to other provisions of our rules, both the anti-predatory lending standard and the prohibition against unfair or deceptive practices also apply to national banks' non-real estate lending. A number of commenters on these amendments lauded the content of the Advisory Letters but questioned their enforceability.

[5] A listing of enforcement actions taken recently by the OCC is available on our Web site in the ''Popular FOIA Requests'' section at *http://www.occ.treas.gov/foia/foiadocs.htm.*

[6] 12 CFR 5.34(e) (operating subsidiaries may conduct only those activities permissible for the parent national bank; operating subsidiaries' authorized activities are subject to the same terms and conditions as apply to the parent bank).

[7] 12 U.S.C. 1831p–1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, section 132(a), 105 Stat. 2236, 2267–70 (Dec. 19, 1991) (FDICIA).

[8] See 12 U.S.C. 1831p–1(e)(1)(A)(i) and (ii). In either case, however, the statute authorizes the issuance of an order and the subsequent enforcement of that order in court, independent of any other enforcement action that may be available in a particular case.

[9] The procedures governing the determination and notification of failure to satisfy a standard prescribed pursuant to Section 39, the filing and review of compliance plans, and the issuance, if necessary, of orders appear in our regulations at 12 CFR 30.3, 30.4, and 30.5, respectively.

Orders are formal, public documents, and they may be enforced in district court or through the assessment of civil money penalties under 12 U.S.C. 1818.

Description of the OCC's Residential Mortgage Lending Practices Guidelines

The Guidelines consist of three parts. Part I provides an introduction to the Guidelines and explains their scope and application. Part II sets forth general standards for residential mortgage lending practices. Part III describes the implementation of those standards. We have also made technical conforming amendments to the part 30 regulations to add references to new Appendix C, which contains the Guidelines, where appropriate.

Part I: Introduction

Part I describes the purpose of the Guidelines, which is to protect against involvement by national banks and their operating subsidiaries, either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to bank customers and that expose the bank to credit, compliance, reputation, and other risks associated with abusive lending practices. The Guidelines apply to residential mortgage lending by national banks, federal branches and agencies of foreign banks, and operating subsidiaries of such entities, except for brokers, dealers, persons providing insurance, investment companies, and investment advisers, all of which are functionally regulated pursuant to various provisions of law. For purposes of the Guidelines, a residential mortgage loan is any loan or other extension of credit made to one or more individuals for personal, family, or household purposes and secured by an owner-occupied, 1–4 family residential dwelling, including a cooperative unit or mobile home.

The Guidelines are enforceable, pursuant to Section 39 of the FDIA and part 30 of our rules, as we have described. However, as set forth in Part I, nothing in the Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions, unfair or deceptive practices, or other violations of law. Thus, for example, a bank's failure to comply with the standards set forth in these Guidelines also may be actionable under section 8 of the FDIA if the failure constitutes an unsafe or unsound practice, or under section 5 of the Federal Trade Commission Act if it is an unfair or deceptive practice.

Part II: Standards for Residential Mortgage Lending Practices

Part II of the Guidelines describes two overarching objectives that should inform a bank's residential mortgage lending activities. First, the bank must be able effectively to manage the various risks—including credit, legal, compliance, and reputation risks—associated with those activities. Second, the bank must not become engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans. These objectives reflect expectations that are fundamental to sound banking practices. Different banks may achieve these objectives using different methods, however, and the Guidelines expressly recognize that the practices a bank follows in its residential mortgage lending activities need to be consistent with, and appropriate to, its size and complexity and the nature and scope of those activities.

Part III: Implementation of Residential Mortgage Lending Practices

Part III describes standards for the implementation of the objectives described in Part II. It comprises six components. First, Part III lists and briefly describes specific lending practices inconsistent with sound residential mortgage lending practices, including practices known as equity stripping, fee packing, and loan flipping, refinancing of a special subsidized mortgage on terms adverse to the consumer, and encouraging a borrower to breach a contract and default on an existing loan in connection with a refinancing of that loan. The features of these practices are widely recognized as abusive and were addressed by the OCC in our February, 2003 advisory letters.

Second, Part III describes certain loan terms, conditions and features—such as financing single premium insurance, negative amortization and mandatory arbitration—that may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices, yet may be acceptable and may benefit customers under other circumstances. Part III cautions banks to exercise care when they offer loans containing these terms, conditions, and features, particularly in connection with subprime lending.

Third, banks that decide to offer loans with the types of features just described should take particular account of the circumstances of the consumers to whom the loans are offered. Banks should exercise heightened diligence if they offer such loans to consumers who are elderly, substantially indebted, not financially sophisticated, have language barriers, have limited or poor credit histories, or have other characteristics that limit their credit choices. In addition, banks should apply heightened internal controls and monitoring with regard to this type of lending.

Fourth, banks should provide timely, sufficient, and accurate information to consumers concerning the terms and the relative costs, risks, and benefits of the loan.

Fifth, with respect to consumer residential mortgage loans that a bank purchases, or makes through a mortgage broker or other intermediary, the bank's residential mortgage lending activities also should include appropriate measures to mitigate risks. Part III provides a number of examples of such measures, including criteria for entering into and continuing relationships with intermediaries and originators, methods through which the bank may retain appropriate controls over mortgage origination functions, and criteria and procedures for the bank to take appropriate corrective action if necessary.

Finally, Part III makes clear that a bank's responsibilities for maintaining appropriate consumer residential mortgage lending practices are ongoing. For example, on a continuing basis, a bank should monitor its compliance with applicable law and its internal lending standards, and monitor and evaluate its handling of customer complaints. The bank's activities also should include appropriate steps for taking corrective action in response to failure to adhere to the requirements of the law or its internal lending standards, and for making adjustments to the bank's activities to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's lines of business, residential mortgage loan programs, or customer base.

Effective Date

These Guidelines take effect April 8, 2005. The Administrative Procedure Act[10] (APA) requirements for notice and opportunity for comment do not apply to the Guidelines. The APA excepts from its notice and comment requirements, among other types of issuances, ''general statements of policy.''[11] General statements of policy

[10] 5 U.S.C. 551 *et seq.*

[11] 5 U.S.C. 553(b)(A).

are ''statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [12] Consistent with this definition, courts have found that an issuance is a general statement of policy if it applies prospectively and ''leaves the [agency] free to exercise [its] informed discretion in the situations that arise.'' [13]

Although these residential mortgage lending standards build on the standards in our 2003 Advisory Letters, their placement within the enforcement framework established by Section 39 of the FDIA applies prospectively only. Moreover, we are issuing the Guidelines in a form that, by the express terms of Section 39, preserves the OCC's discretion to require a compliance plan, and, thus, whether to initiate the part 30 process in any particular case. For these reasons, we conclude that the Guidelines fall within the APA exception for general statements of policy and that notice and comment procedures are, accordingly, not required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603.

Executive Order 12866

The OCC has determined that the Guidelines are not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted earlier, the OCC has determined that a notice of proposed rulemaking was not required for these Guidelines. Accordingly, the OCC concludes that the UMA does not require an unfunded mandates analysis of the Guidelines.

Moreover, the OCC believes that the Guidelines will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 30

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 371, 1818, 1831p, 3102(b); 15 U.S.C. 1681S, 1681W, 6801, 6805(b)(1).

§ 30.1 [Amended]

■ 2. Section 30.1(a) is amended by removing ''appendices A and B'' and adding in its place ''appendices A, B, and C''.

§ 30.2 [Amended]

■ 3. In § 30.2, add a final sentence to read as follows: ''The OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices are set forth in appendix C to this part.''

§ 30.3 [Amended]

■ 4. Section 30.3(a) is amended by removing ''and the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part'' and adding in its place ''the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part, or the OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices set forth in appendix C to this part''.

■ 5. A new Appendix C is added to part 30 to read as follows:

Appendix C to Part 30—OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices

Table of Contents

I. Introduction

i. These OCC Guidelines for Residential Mortgage Lending Practices (Guidelines) set forth standards pursuant to Section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1 (Section 39). The Guidelines are designed to protect against involvement by national banks and their operating subsidiaries, either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to bank customers and that expose the bank to credit, legal, compliance, reputation, and other risks. The Guidelines focus on the substance of activities and practices, not the creation of policies. The Guidelines are enforceable under Section 39 in accordance with the procedures prescribed by the regulations in 12 CFR part 30.

ii. As the OCC has previously indicated in guidance to national banks and in rulemaking proceedings (OCC Advisory Letters 2003–2 and 2003–3 (Feb. 21, 2003)), many of the abusive practices commonly associated with predatory mortgage lending, such as loan flipping and equity stripping, will involve conduct that likely violates the Federal Trade Commission Act's (FTC Act) prohibition against unfair or deceptive acts or practices. 15 U.S.C. 45. In addition, loans that involve violations of the FTC Act, or mortgage loans based predominantly on the foreclosure or liquidation value of the borrower's collateral without regard to the borrower's ability to repay the loan according to its terms, will involve violations of OCC regulations governing real estate lending activities, 12 CFR 34.3 (Lending Rules).

iii. In addition, national banks and their operating subsidiaries must comply with the requirements and Guidelines affecting appraisals of

[12] U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act, at 30 n.3 (1947).

[13] *Guardian Federal Savings and Loan Ass'n v. Federal Savings and Loan Insurance Corp.*, 589 F.2d 658, 666–67 (D.C. Cir. 1978) (concluding that an FSLIC bulletin that used ''directive'' language to specify the criteria necessary for a satisfactory audit of a savings association was nonetheless a ''general statement of policy'' within the meaning of the APA because it preserved the FSLIC's discretion to accept a non-conforming audit report or to prescribe additional requirements in a particular case). *See also Chen Zhon Chai v. Carroll*, 48 F.3d 1331, 1341 (4th Cir. 1995) (''A rule is a general statement of policy if it does not establish a binding norm and leaves agency officials free to exercise their discretion.'')

residential mortgage loans and appraiser independence. 12 CFR part 34, subpart C, and the Interagency Appraisal and Evaluation Guidelines (OCC Advisory Letter 2003–9 (October 28, 2003)). For example, engaging in a practice of influencing the independent judgment of an appraiser with respect to a valuation of real estate that is to be security for a residential mortgage loan would violate applicable standards.

iv. Targeting inappropriate credit products and unfair loan terms to certain borrowers also may entail conduct that violates the FTC Act, as well as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). 15 U.S.C. 1691 *et seq.* 42 U.S.C. 3601 *et seq.* For example, ''steering'' a consumer to a loan with higher costs rather than to a comparable loan offered by the bank with lower costs for which the consumer could qualify, on a prohibited basis such as the borrower's race, national origin, age, gender, or marital status, would be unlawful.

v. OCC regulations also prohibit national banks and their operating subsidiaries from providing lump sum, single premium fees for debt cancellation contracts and debt suspension agreements in connection with residential mortgage loans. 12 CFR 37.3(c)(2). Some lending practices and loan terms, including financing single premium credit insurance and the use of mandatory arbitration clauses, also may significantly impair the eligibility of a residential mortgage loan for purchase in the secondary market.

vi. Finally, OCC regulations and supervisory guidance on fiduciary activities and asset management address the need for national banks to perform due diligence and exercise appropriate control with regard to trustee activities. See 12 CFR 9.6 (a) and Comptroller's Handbook on Asset Management. For example, national banks should exercise appropriate diligence to minimize potential reputation risks when they undertake to act as trustees in mortgage securitizations.

A. *Scope.* These Guidelines apply to the residential mortgage lending activities of national banks, federal branches and agencies of foreign banks, and operating subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. *Preservation of Existing Authority.* Neither Section 39 nor these Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions, unfair or deceptive practices, or other violations of law. The OCC may take action under Section 39 and these Guidelines independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

C. *Relationship to Other Legal Requirements.* Actions by a bank in connection with residential mortgage lending that are inconsistent with these Guidelines or Appendix A to this Part 30 may also constitute unsafe or unsound practices for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, unfair or deceptive practices for purposes of section 5 of the FTC Act, 15 U.S.C 45, and the OCC Lending Rules, 12 CFR 34.3, or violations of the ECOA and FHA.

D. *Definitions.*

1. Except as modified in these Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1813 and 1831p–1.

2. For purposes of these Guidelines, the following definitions apply:

a. *Residential mortgage loan* means any loan or other extension of credit made to one or more individuals for personal, family, or household purposes secured by an owner-occupied 1–4 family residential dwelling, including a cooperative unit or mobile home.

b. *Bank* means any national bank, federal branch or agency of a foreign bank, and any operating subsidiary thereof that is subject to these Guidelines.

II. Standards for Residential Mortgage Lending Practices

A. *General.* A bank's residential mortgage lending activities should reflect standards and practices consistent with and appropriate to the size and complexity of the bank and the nature and scope of its lending activities.

B. *Objectives.* A bank's residential mortgage lending activities should reflect standards and practices that:

1. Enable the bank to effectively manage the credit, legal, compliance, reputation, and other risks associated with the bank's consumer residential mortgage lending activities.

2. Effectively prevent the bank from becoming engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans.

III. Implementation of Residential Mortgage Lending Standards

A. *Avoidance of Particular Loan Terms, Conditions, and Features.* A bank should not become involved, directly or indirectly in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices, including, but not limited to:

1. *Equity Stripping and Fee Packing.* Repeat refinancings where a borrower's equity is depleted as a result of financing excessive fees for the loan or ancillary products.

2. *Loan Flipping.* Repeat refinancings under circumstances where the relative terms of the new and refinanced loan and the cost of the new loan do not provide a tangible economic benefit to the borrower.

3. *Refinancing of Special Mortgages.* Refinancing of a special subsidized mortgage that contains terms favorable to the borrower with a loan that does not provide a tangible economic benefit to the borrower relative to the refinanced loan.

4. *Encouragement of Default.* Encouraging a borrower to breach a contract and default on an existing loan prior to and in connection with the consummation of a loan that refinances all or part of the existing loan.

B. *Prudent Consideration of Certain Loan Terms, Conditions and Features.* Certain loan terms, conditions and features, may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices, yet may be appropriate and acceptable risk mitigation measures, consistent with safe and sound lending, and benefit customers under other circumstances. A bank should prudently consider the circumstances, including the characteristics of a targeted market and applicable consumer and safety and soundness safeguards, under which the bank will engage directly or indirectly in making residential mortgage loans with the following loan terms, conditions and features:

1. Financing single premium credit life, disability or unemployment insurance.

2. Negative amortization, involving a payment schedule in which regular periodic payments cause the principal balance to increase.

3. Balloon payments in short-term transactions.

4. Prepayment penalties that are not limited to the early years of the loan, particularly in subprime loans.

5. Interest rate increases upon default at a level not commensurate with risk mitigation.

6. Call provisions permitting the bank to accelerate payment of the loan under circumstances other than the borrower's default under the credit agreement or to mitigate the bank's exposure to loss.

7. Absence of an appropriate assessment and documentation of the consumer's ability to repay the loan in accordance with its terms, commensurate with the type of loan, as required by Appendix A of this part.

8. Mandatory arbitration clauses or agreements, particularly if the eligibility of the loan for purchase in the secondary market is thereby impaired.

9. Pricing terms that result in the loan's being subject to the provisions of the Home Ownership and Equity Protection Act. 15 U.S.C. 1639 *et seq.*

10. Original principal balance of the loan in excess of appraised value.

11. Payment schedules that consolidate more than two periodic payments and pay them in advance from the loan proceeds.

12. Payments to home improvement contractors under a home improvement contract from the proceeds of a residential mortgage loan other than by an instrument payable to the consumer, jointly to the consumer and the contractor, or through an independent third party escrow agent.

C. *Enhanced Care to Avoid Abusive Loan Terms, Conditions, and Features in Certain Mortgages.* A bank may face heightened risks when it solicits or offers loans to consumers who are not financially sophisticated, have language barriers, or are elderly, or have limited or poor credit histories, are substantially indebted, or have other characteristics that limit their credit choices. In connection with such consumers, a bank should exercise enhanced care if it employs the residential mortgage loan terms, conditions, and features described in paragraph B of this section III, and should also apply appropriate heightened internal controls and monitoring to any line of business that does so.

D. *Avoidance of Consumer Misunderstanding.* A bank's residential mortgage lending activities should include provision of timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan. Consumers should be provided with information sufficient to draw their attention to these key terms.

E. *Purchased and Brokered Loans.* With respect to consumer residential mortgage loans that the bank purchases, or makes through a mortgage broker or other intermediary, the bank's residential mortgage lending activities should reflect standards and practices consistent with those applied by the bank in its direct lending activities and include appropriate measures to mitigate risks, such as the following:

1. Criteria for entering into and continuing relationships with intermediaries and originators, including due diligence requirements.

2. Underwriting and appraisal requirements.

3. Standards related to total loan compensation and total compensation of intermediaries, including maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics.

4. Requirements for agreements with intermediaries and originators, including with respect to risks identified in the due diligence process, compliance with appropriate bank policies, procedures and practices and with applicable law (including remedies for failure to comply), protection of the bank against risk, and termination procedures.

5. Loan documentation procedures, management information systems, quality control reviews, and other methods through which the bank will verify compliance with agreements, bank policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings.

6. Criteria and procedures for the bank to take appropriate corrective action, including modification of loan terms and termination of the relationship with the intermediary or originator in question.

F. *Monitoring and Corrective Action.* A bank's consumer residential mortgage lending activities should include appropriate monitoring of compliance with applicable law and the bank's lending standards and practices, periodic monitoring and evaluation of the nature, quantity and resolution of customer complaints, and appropriate evaluation of the effectiveness of the bank's standards and practices in accomplishing the objectives set forth in these Guidelines. The bank's activities also should include appropriate steps for taking corrective action in response to failures to comply with applicable law and the bank's lending standards, and for making adjustments to the bank's activities as may be appropriate to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's lines of business, residential mortgage loan programs, or customer base.

Dated: January 31, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 05–2211 Filed 2–4–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20060; Airspace Docket No. 05–ACE–2]

Modification of Class E Airspace; Rolla, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Rolla, MO. A review of controlled airspace for Rolla Downtown Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 2, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20060/ Airspace Docket No. 05–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward

from 700 feet above the surface at Rolla, MO. An examination of controlled airspace for Rolla Downtown Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile radius to a 7.8-mile radius of Rolla Downtown Airport and brings the legal description of the Rolla, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20060/Airspace Docket No. 05–ACE–2.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Rolla Downtown Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Rolla, MO

Rolla Downtown Airport, MO
(Lat. 37°56′08″ N., long. 91°48′49″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Rolla Downtown Airport.

* * * * *

Issued in Kansas City, MO, on January 20, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–2232 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18734; Airspace Docket No. 03–AAL–03]

RIN 2120–AA66

Revision of Colored Federal Airway; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Colored Federal Airway Green 16 (G–16), in Alaska. This action adds to the

instrument flight rules (IFR) airway and route structure in Alaska by extending G–16 from Put River, AK, to Barter Island, AK. The FAA is taking this action to enhance the safety and management of aircraft operations in Alaska.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 3, 2004, the FAA published in the **Federal Register** a notice proposing to establish G–16 (69 FR 53860), a new IFR route in Alaska. This action would convert an uncharted non-regulatory part 95 route to a colored Federal airway. The route conversion provides an airway structure to support existing commercial services in Alaska. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to extend G–16 from the Put River, NDB, to the Barter Island, NDB in Alaska. This action adds to the IFR airway and route structure in Alaska. The FAA is taking this action to enhance the safety and management of aircraft operations in Alaska. Adoption of this Federal airway: (1) Provides pilots with minimum en route altitudes and minimum obstruction clearance altitudes information; (2) establishes controlled airspace thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (3) improves the management of air traffic operations and thereby enhance safety.

Green Colored Federal Airways are published in paragraph 6009(a) of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Green Colored Federal Airway listed in this document will be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–16 [Revised]

From Point Lay, AK, NDB; Wainwright Village, AK, NDB; Browerville, AK, NDB; Nuiqsut Village, AK, NDB; Put River, AK, NDB; to Barter Island, AK, NDB.

* * * * *

Issued in Washington, DC, on January 27, 2005.

Edie Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–2228 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19422; Airspace Docket No. 03–AEA–11]

RIN 2120–AA66

Establishment of VOR Federal Airway V–623

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Federal Airway 623 (V–623) between the Sparta, NJ, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and the Carmel, NY, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The FAA is taking this action to enhance the management of aircraft transiting from the New England area to airports in the Newark, NJ, area.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 23, 2004, the FAA published in the **Federal Register** a notice proposing to establish V–623 (69 FR 68105). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by establishing V–623 in the vicinity of Newark, NJ, between the Sparta, NJ, VORTAC, and the Carmel,

NY, VOR/DME. The FAA is taking this action to enhance the management of aircraft transiting from the New England area to airports in the Newark, NJ, area.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9M dated August 30, 2004 and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airway listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

V–623 [New]

From Carmel, NY; INT Carmel 263° and Sparta, NJ 028° radials; Sparta.

Issued in Washington, DC on January 26, 2005.

Edie Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–2229 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30437; Amdt. No. 453]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on January 31, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator,

part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 20, 2005.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 453 effective date, March 17, 2005]

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6521 VOR Federal Airway V521 is Amended to Read in Part		
Hevvn, FL FIX *7000—MCA TERES, FL FIX , E BND **1300—MOCA	*TERES, FL FIX	**7000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7180 Jet Route J180 is added to read			
Little Rock, AR VORTAC	Foristell, MO VORTAC	18000	45000
§ 95.7181 Jet Route J181 is Amended to Read in Part			
Neosho, MO VOR/DME Hallsville, MO VORTAC	Hallsville, MO VORTAC Bradford, IL VORTAC	18000 18000	45000 45000
§ 95.7187 Jet Route J187 is Added to Read			
Memphis, TN VORTAC	Foristell, MO VORTAC	18000	45000

From	To	Changeover Points	
		Distance	From
§ 95.8005 Jet Routes Changeover Points Airway Segment J181 is Amended to Modify Changeover Point			
Neosho, MO VOR/DME	Hallsville, MO VORTAC	45	Neosho
J187 is Amended to Modify Changeover Point			
Memphis, TN VORTAC	Foristell, MO VORTAC	96	Memphis

[FR Doc. 05–2230 Filed 2–4–05; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30436; Amdt. No. 3115]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 7, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 7, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 28, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective March 17, 2005*

Atlanta, GA, Cobb County-McCollum Field, VOR/DME RWY 9, Amdt 1
Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 9, Amdt 1
Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 27, Amdt 1
Carrollton, GA, West Georgia Regional-O V Gray Field, RNAV (GPS) RWY 17, Orig
Carrollton, GA, West Georgia Regional-O V Gray Field, RNAV (GPS) RWY 35, Orig
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 13, Amdt 1
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 31, Amdt 1
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) RWY 19, Amdt 1
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y RWY 19, Orig, CANCELLED
Auburn/Lewiston, ME, Auburn/Lewiston Muni, RNAV (GPS) RWY 4, Orig
Auburn/Lewiston, ME, Auburn/Lewiston Muni, RNAV (GPS) RWY 22, Orig
Auburn/Lewiston, ME, Auburn/Lewiston Muni, ILS OR LOC RWY 4, Amdt 10
Auburn/Lewiston, ME, Auburn/Lewiston Muni, NDB RWY 4, Amdt 11
Auburn/Lewiston, ME, Auburn/Lewiston Muni, VOR/DME–A, Amdt 1
Hattiesburg, MS, Bobby L. Chain Muni, RNAV (GPS) RWY 31, Orig, CANCELLED
Indianola, MS, Indianola Muni, VOR/DME–A, Amdt 9
Indianola, MS, Indianola Muni, VOR/DME–B, Amdt 5
Indianola, MS, Indianola Muni, NDB RWY 17, Amdt 5
Indianola, MS, Indianola Muni, NDB RWY 35, Amdt 5
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 17, Orig
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 35, Orig
Mineola-Quitman, TX, Wood County, RNAV (GPS) RWY 18, Orig
Mineola-Quitman, TX, Wood County, RNAV (GPS) RWY 36, Orig
Mineola-Quitman, TX, Wood County, VOR/DME–B, Amdt 2
Mineola-Quitman, TX, Wood County, VOR/DME RNAV RWY 18, Amdt 2
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, RNAV (GPS) RWY 9, Orig
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, RNAV (GPS) RWY 13, Orig
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, RNAV (GPS) RWY 31, Orig
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, ILS OR LOC RWY 27, Amdt 34
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, RADAR–1, Amdt 1

Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, NDB RWY 27, Amdt 14
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, VOR OR TACAN–A, Amdt 10
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, GPS RWY 12, Amdt 1B, CANCELLED
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, GPS RWY 26, Orig-A, CANCELLED

** * * Effective May 12, 2005*

Minot, ND, Minot Intl, LOC/DME BC RWY 13, Amdt 7

[FR Doc. 05–2222 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

February 1, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION, CONTACT: Michael J. McGehee, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8962.

Publication of Project Cost Limits Under Blanket Certificates; Order of the Director, OEP

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC &61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to '375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2005, as published in Table I of '157.208(d) and Table II of '157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

J. Mark Robinson,

Director, Office of Energy Projects.

■ Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit	
	Auto. proj. cost limit (Col.1)	Prior notice proj. cost limit (Col.2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000
2004	7,800,000	21,600,000
2005	8,000,000	22,000,000

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000

* * * * *

[FR Doc. 05–2255 Filed 2–4–05; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AF84

Determining Income and Resources Under the Supplemental Security Income (SSI) Program

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our regulations that explain how we determine an individual's income and resources under the supplemental security income (SSI) program in order to achieve three program simplifications. First, we are eliminating clothing from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of the benefits. Second, we are changing our resource-counting rules in the SSI program by eliminating the dollar value limit for the exclusion of household goods and personal effects.

As a result, we will not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits. Third, we are changing our rules for excluding an automobile in determining the resources of an SSI applicant or recipient. We will exclude one automobile (the ''first'' automobile) from resources if it is used for transportation for the individual or a member of the individual's household, without consideration of its value. These changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow. Our experience of nearly 30 years of processing SSI claims indicates that these simplifications will have minimal effect on the outcome of SSI eligibility determinations.

DATES: These regulations are effective on March 9, 2005.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA, Social Security Online, at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

The basic purpose of the SSI program (title XVI of the Social Security Act (the Act)) is to ensure a minimum level of income to people who are age 65 or older, or blind or disabled, and who have limited income and resources. The law provides that payments can be made only to people who have income and resources below specified amounts. Therefore, the amount of income and resources a person has is a major factor in deciding whether the person can receive SSI benefits and in computing the amount of the benefits.

The Government Accountability Office (GAO) has reported that annual costs to the Federal Government for administering means-tested Federal programs are significant and that eligibility determination activities make up a substantial portion of these costs (Means-Tested Programs: Determining Financial Eligibility Is Cumbersome and Can Be Simplified, *GAO–02–58*, November 2, 2001 available at *http://www.gao.gov*). In particular, the GAO cited the variations and complexity of Federal financial eligibility rules as contributing to processes that are often duplicative and cumbersome for staff workers (including state and local caseworkers) and for those who apply for assistance. In order to streamline our eligibility determination process, as well as make our financial eligibility rules more consistent with those of other means-tested Federal programs, we are making the following changes to our rules on determining income and resources under the SSI program.

Explanation of Changes

A. Elimination of Clothing From the Definitions of Income and In-Kind Support and Maintenance

Section 1612 of the Act defines income as both earned income and unearned income, including support and maintenance furnished in cash or in kind. Under our current rules, income may include anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Both earned income and unearned income can include items received in kind. Generally, we value in-kind items at their current market value. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income.

In-kind support and maintenance is unearned income in the form of food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Section 1612(a)(2)(A) of the Act provides that if an eligible individual receives in-kind support and maintenance, his or her SSI payment may be reduced by up to one-third of the monthly Federal benefit rate. To determine whether the one-third reduction applies, we must ask claimants and beneficiaries a lengthy series of questions about their living arrangements and household expenses. We also must obtain similar information from the homeowner or head of the household, who often is not a claimant or recipient.

The complexity of the rules for valuing in-kind support and maintenance results in reporting requirements that are difficult for the public to understand and follow. We are, therefore, simplifying the SSI program by eliminating clothing from the definition of income and from the definition of in-kind support and maintenance. Clothing is one of the basic sustenance needs, along with food and shelter. However, unlike food and shelter, clothing generally is not received every month. Items of clothing are more likely to be received infrequently and sporadically, and they generally have no substantial financial value. In addition, our attempts to discover and assign a value to gifts of clothing are not only administratively burdensome, but have been viewed as harsh and demeaning and as providing a disincentive for family members to help needy relatives.

After 30 years of administering the SSI program, our experience shows that clothing received as in-kind support and maintenance rarely affects an individual's eligibility for SSI or the amount of benefits. Thus, questioning individuals about items as personal as basic clothing may be seen as intrusive without achieving any substantial program goal or enhancing program integrity. We are making this change to simplify our rules and improve our work efficiency. This change will make our rules less intrusive and more protective of the dignity and privacy of claimants and beneficiaries, and will not significantly increase SSI program costs.

We are removing the specific reference to clothing from our broad definition of income in § 416.1102, which covers both earned and unearned income. This will permit us to disregard gifts of clothing when we apply the special rules for valuing in-kind support and maintenance. Counting gifts of clothing puts a negative face on the SSI program without advancing any substantial program goal and incurs administrative costs.

There will be one situation where we will be required to consider clothing as income. This situation could occur when an individual receives clothing from an employer that we must count as wages under section 1612(a)(1)(A) of the Act. Wages are the same for SSI purposes as for the earnings test in the Social Security retirement program. Under the earnings test, wages may include the value of food, clothing, or shelter, or other items provided instead of cash. We refer to these items as in-kind earned income. Because we are required by the Act to count the value of these items as income, we are not making any changes to our current rule in § 416.1110(a). Situations where clothing constitutes wages are very uncommon.

These rules remove references to clothing throughout subpart K, which explains how we count income. We also are updating the second example in

§ 416.1103(g) to reflect that SSI eligibility is now based on an individual's income, resources, and other relevant circumstances in a *month* rather than in a *calendar quarter*. The change from a quarterly determination to a monthly determination, which is explained in § 416.420, was effective April 1, 1982 pursuant to section 2341 of Public Law 97–35. This example was inadvertently overlooked when conforming changes were previously made.

B. Exclusion of Household Goods and Personal Effects

Section 1613(a)(2)(A) of the Act provides that in determining the resources of an individual (and eligible spouse, if any), SSA will exclude household goods and personal effects to the extent that their total value does not exceed an amount that the Commissioner decides is reasonable. In interpreting ''reasonable'' value of household goods and personal effects, § 416.1216(b) of our regulations provides for an exclusion of up to $2,000 of the total equity value. The amount in excess of $2,000 is counted against the resource limit, currently $2,000 for an individual and $3,000 for an individual and spouse.

Section 416.1216(a) defines household goods as including household furniture, furnishings, and equipment that are commonly found in or about a house and used in connection with the operation, maintenance, and occupancy of the home. Also included are furniture, furnishings, and equipment used in the functions and activities of home and family life as well as those items that are for comfort and accommodation. This section specifically defines personal effects as including clothing, jewelry, items of personal care, and individual educational and recreational items. In addition, § 416.1216(c) provides specific exclusions for a wedding ring, an engagement ring, and equipment required because of a person's physical condition.

To determine the equity value of household goods and personal effects, we ask the person for a list of household and personal items, the value of each, and what the individual owes on each. This process can be complex, difficult for the public to understand, and unduly intrusive into personal affairs. We are amending these rules as part of our efforts to simplify the SSI program.

We are amending our regulations for household goods and personal effects by eliminating the dollar value limit and by excluding from countable resources all:

- Household goods if they are items of personal property, found in or near a home, that are used on a regular basis, or items needed by the householder for maintenance, use and occupancy of the premises as a home; and
- Personal effects if they are items of personal property that ordinarily are worn or carried by the individual, or are articles that otherwise have an intimate relation to the individual.

Thus, we will interpret the word ''reasonable'' in section 1613(a)(2)(A) of the Act in terms other than a specific dollar limit. The reasonable value will instead be based on the uses and characteristics of the item. Our current rules on household goods and personal effects reflect our view that it is reasonable to totally exclude certain items of personal property because they are rarely of significant value or are intimately related to the individual and his or her particular needs. Accordingly, we have determined that requiring conversion of such items for subsistence needs is unreasonable.

Currently, § 416.1216(c) provides for totally excluding a wedding ring and an engagement ring, and household goods and personal effects required because of a person's physical condition. We are expanding this approach generally to household goods and personal effects so that they may be totally excluded from resources because our experience in 30 years of administering the SSI program shows that these items almost never have any substantial value, particularly once they are used.

These rules amend § 416.1216 to define and identify household goods and personal effects that we will not count as resources. Included in the list of excluded personal effects are items of cultural or religious significance since these items have an intimate relationship to an individual. The list of exclusions also includes items required due to an individual's impairment. This will allow for exclusion of items required because of any impairment, not just physical impairments. For example, our experience has shown that children and adults with learning disabilities use personal computers to assist them with schoolwork and other daily activities. This change will allow us to exclude items such as personal computers from countable resources.

We are also amending § 416.1210(b) by referring to § 416.1216 for the definition of household goods and personal effects that we will not count as resources.

While simplifying the SSI program, our changes continue to recognize that individuals applying for SSI may own items for investment purposes which may be quite valuable. Such items as gems, jewelry that is not worn or held for family significance, and collectibles will still be considered countable resources and subject to the limits in § 416.1205. Thus, the exclusion for household goods and personal effects will not apply to such items that have investment value.

Our experience in administering the SSI program suggests that the change we are making will affect the eligibility of only a few applicants and recipients. However, this change will simplify our rules and improve our work efficiency without significantly increasing program costs. It will make our rules less intrusive and more protective of the dignity of applicants and recipients. This intrusion into the privacy of a person's home unnecessarily puts a negative face on the SSI program without achieving any corresponding gain in program integrity or payment accuracy. It also will more accurately reflect the reality that all SSI applicants and recipients need household goods and personal effects to perform activities of daily living and maintain quality of life. Accordingly, we believe it would be unreasonable to require applicants and recipients to convert these items to cash in order to meet their subsistence needs. The resale value of typical household items is minimal after the item has been used. Although it could be expensive to replace certain household items, these items would be worth very little if the individual tried to resell them to get cash for subsistence needs.

C. Exclusion of an Automobile From Resources

Section 1613(a)(2)(A) of the Act provides that, in determining the resources of an individual (and eligible spouse, if any) for SSI purposes, SSA will exclude an automobile to the extent that its value does not exceed an amount that the Commissioner of Social Security decides is reasonable. Current regulations at § 416.1218 define an ''automobile'' as a passenger car or other vehicle used to provide necessary transportation.

In interpreting ''reasonable'' value, § 416.1218(b)(1) provides that an automobile is totally excluded regardless of value if it meets any of the four following criteria:

- It is necessary for employment;
- It is necessary for the medical treatment of a specific or regular medical problem;
- It is modified for a handicapped person; or

• It is necessary because of certain factors to perform essential daily activities.

If no automobile can be excluded based on its use, one automobile is excluded to the extent its current market value does not exceed $4,500. See § 416.1218(b)(2). Additional automobiles are counted as nonliquid resources to the extent of their equity value. See § 416.1218(b)(3).

We are amending our rules to exclude one automobile from resources regardless of its value if it is used for transportation for the individual or a member of the individual's household. We are doing so because our data establish that the vast majority of ''first'' automobiles owned by SSI recipients are currently excluded based on one of the four transportation criteria set out in § 416.1218(b)(1). In addition, there is no indication that the automobiles which are not covered by the special circumstances represent significant resources. Based on quality assurance data for 1998, in approximately 98 percent of those SSI cases involving automobile ownership, the value of one car was completely excluded. Anecdotal data from SSA claims representatives support the 1998 quality assurance data.

We are revising § 416.1210(c) to exclude from resources an automobile that is used for transportation as provided in § 416.1218. We are also changing § 416.1218(b) to exclude totally one automobile regardless of value if it is used for transportation for the individual or a member of the individual's household and to eliminate the existing four specific reasons for exclusion. We are also removing § 416.1218(c), which contains the definition of the current market value of an automobile.

Under current policy, we virtually always exclude one automobile for each individual or couple applying for or receiving SSI. Our aim in simplifying the automobile rules is to achieve essentially the same outcome by automatically excluding one automobile used for transportation for each individual or couple without unnecessary claims development.

The Act states that we will exclude an automobile of reasonable value. We have previously interpreted the word ''reasonable'' in terms of the uses and needs of disabled individuals and in terms of dollar limits. Specifically, the preamble to the final regulation which increased the exclusion of the automobile value to $4,500 on July 24, 1979 (44 FR 43265) stated that we had ''concluded that there are special circumstances which justify entirely excluding an automobile. For example, if the automobile is needed for employment or medical treatment or if it has been modified for use by a handicapped person, we will exclude it without regard to value.'' Since October 22, 1985 (50 FR 42687), the regulations also provide for total exclusion of an automobile if, due to certain factors, it is necessary for transportation to perform essential daily activities. Our experience shows that virtually all SSI claimants and recipients who have automobiles need them for transportation under the circumstances listed above.

It should be noted that our interpretation of ''reasonable'' will not eliminate the requirement to develop the value of second or additional automobiles. Nor will the ''first'' automobile be excluded if it is not used for transportation. In those cases where a vehicle is inoperable, or operable but not used at all, or used only for recreation (*e.g.*, a dune buggy), it will still be valued according to current rules. We believe it would be unreasonable to exclude from resources the value of a vehicle that is not used for transportation.

The change will have a negligible effect on program costs and will simplify administration of the exclusion. It will eliminate the need for SSA claims representatives to ask the SSI recipient if his/her vehicle meets one of the four specific exclusion criteria or otherwise determine the value of the vehicle.

Public Comments

On January 6, 2004, we published proposed rules in the **Federal Register** at 69 FR 554 and provided a 60-day period for interested parties to comment. We received comments from 49 individuals and 20 organizations. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We have tried to present all views adequately and to carefully address all of the issues raised by the commenters that are within the scope of the proposed rules.

Fifty-nine of the commenters fully support the proposed rules and have not requested any additional changes in the regulations. Most of these commenters cited ''simplification of the SSI rules'' and ''reducing the burden on the public'' as the reasons for their support of the proposed rules.

The remaining commenters raised the following issues that are within the scope of the proposed rules.

Comment: Several commenters supported the proposed regulations but recommended a change to the automobile exclusion. We proposed to exclude one automobile regardless of value if it is used for transportation by the SSI eligible individual or a member of that individual's household. The commenters recommended inserting language which would also permit exclusion of one automobile if SSA determines that the automobile is being used by a person who lives outside the household to help the SSI eligible individual. The commenters state that this would address the situation in which the automobile is never used by the SSI eligible individual or any member of the household but it is used by a person outside the household to run errands for the eligible individual.

Response: After careful consideration, we decided not to adopt this suggested change. The Social Security Act provides an exclusion for an automobile of reasonable value. Since 1985, our interpretation of reasonable value has been based on the premise that the excluded automobile is used to provide necessary transportation for the individual or a member of the individual's household. If an automobile is not used to provide transportation for the individual or members of the individual's household, it is not excluded from resources. Limiting the exclusion to an automobile used to provide transportation for the individual or a household member is appropriate because it links the exclusion of the automobile with use of the automobile by the person who owns the automobile or by a member of his or her household. In addition, the revised rules will permit an exclusion of the automobile if a person residing outside the individual's household uses the automobile to provide transportation for the individual or a household member.

Comment: One individual disagreed with our proposed rule for the automobile exclusion because the rule does not limit the dollar value of the automobile being excluded. The commenter stated that such a rule would not be well-received by the public.

Response: After careful consideration, we have decided not to make any change based on this comment. Under our revised rules, we are simplifying the procedures for determining whether an automobile is excluded. However, we are not making any change to the exclusion on the basis of a dollar limit. We have excluded automobiles used for necessary transportation regardless of value since 1985. After nearly 20 years of experience with excluding automobiles regardless of value, we have not found that this approach has caused concern in the general public. In

addition, our effort to simplify the rules for this exclusion would be negated by adding a requirement to determine the value of excluded automobiles which in many situations would require determining the individual's equity in the automobile and the condition of the automobile.

Comment: One individual expressed overall support for the proposed rules but recommended that artwork and antiques should not be excluded under the exclusion for household goods and personal effects. The commenter expressed concern that an applicant for SSI benefits could own valuable artwork or antiques and that there should be a limit on the value of such items.

Response: After careful consideration, we have decided not to change the language of the exclusion for household goods and personal effects to specify that artwork and antiques should not be excluded. We do not believe such a change is necessary. Although these rules will eliminate the dollar limit for the exclusion of household goods and personal effects, they will still permit us to consider the resources of an individual who owns valuable items that are not considered as household goods or personal effects under our regulatory definition. Our experience of 30 years of administering the SSI program shows that household goods and personal effects rarely have substantial resale value, particularly once they are used. However, our rules will continue to recognize that individuals applying for SSI benefits may own items for investment purposes which may be quite valuable. Such items as gems, jewelry not held for family significance, and collectibles will still be considered as countable resources and be subject to the SSI resource limit. Artwork and antiques can fall within the category of collectibles, and, where they have been acquired or held for their investment value, such items will be countable resources. Although in our claims development process we will not routinely examine all of an individual's furniture and personal possessions to determine if any pieces are valuable artwork or antiques, we will have the regulatory authority to count such value items as resources when we become aware of such items.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities, because they will affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 2, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Section 416.1102 is revised to read as follows:

§ 416.1102 What is income?

Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food or shelter, or something you can use to get one of these.

■ 3. Section 416.1103 is amended by revising the section heading, the introductory text, paragraphs (a)(3), (a)(4), (a)(5) introductory text, (b)(2), (b)(3) introductory text, the examples in paragraph (g), and the text and example 1 of paragraph (j) to read as follows:

§ 416.1103 What is not income?

Some things you receive are not income because you cannot use them as food or shelter, or use them to obtain food or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

(a) * * *

(3) Assistance provided in cash or in kind (including food or shelter) under a Federal, State, or local government program whose purpose is to provide medical care or medical services (including vocational rehabilitation);

(4) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food or shelter) if the cash is either:

* * * * *

(b) * * *

(2) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide social services; or

(3) Cash provided by a nongovernmental social services program (except cash to cover food or shelter) if the cash is either:

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. Similarly, if you buy food on credit and your son later pays the bill, the payment to the store is not income to you, but the food is in-kind income to you. In this example, if your son pays for the food in a month after the month of purchase, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, it is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130 or food) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is *not income* because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

* * * * *

§§416.1104, 416.1121, 416.1124, 416.1130, 416.1133, 416.1140, 416.1142, 416.1144, 416.1145, 416.1147, 416.1148, 416.1149, 416.1157 [Amended]

■ 4. Remove the words ''food, clothing, or shelter'' and add, in their place, the words ''food or shelter'' in the following sections:

a. Section 416.1104;
b. Section 416.1121(b) and (h);
c. Section 416.1124(c)(3);
d. Section 416.1130(a) and (b);
e. Section 416.1133(a);
f. Section 416.1140(a)(1), (a)(2)(i), (a)(2)(ii), (b)(1), and (b)(2);
g. Section 416.1142(b);
h. Section 416.1144(b)(2);
i. Section 416.1145;
j. Section 416.1147(c) and (d)(1);
k. Section 416.1148(b)(1) and (b)(2);
l. Section 416.1149(c)(1)(i) and (c)(1)(ii); and
m. Section 416.1157(b).

Subpart L—[Amended]

■ 5. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 6. Section 416.1210 is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(b) Household goods and personal effects as defined in § 416.1216;

(c) An automobile, if used for transportation, as provided in § 416.1218;

* * * * *

■ 7. Section 416.1216 is revised to read as follows:

§ 416.1216 Exclusion of household goods and personal effects.

(a) *Household goods.* (1) We do not count household goods as a resource to an individual (and spouse, if any) if they are:

(i) Items of personal property, found in or near the home, that are used on a regular basis; or

(ii) Items needed by the householder for maintenance, use and occupancy of the premises as a home.

(2) Such items include but are not limited to: Furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

(b) *Personal effects.* (1) We do not count personal effects as resources to an individual (and spouse, if any) if they are:

(i) Items of personal property ordinarily worn or carried by the individual; or

(ii) Articles otherwise having an intimate relation to the individual.

(2) Such items include but are not limited to: Personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments. We also do not count as resources items of cultural or religious significance to an individual and items required because of an individual's impairment. However, we do count items that were acquired or are held for their value or as an investment because we do not consider these to be personal effects. Such items can include but are not limited to: Gems, jewelry that is not worn or held for family significance, or collectibles. Such items will be subject to the limits in § 416.1205.

■ 8. Section 416.1218 is amended by revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2) and revising it, and removing paragraph (c) to read as follows:

§ 416.1218 Exclusion of the Automobile.

* * * * *

(b) * * *

(1) *Total exclusion.* One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household.

(2) *Other automobiles.* Any other automobiles are considered to be nonliquid resources. Your equity in the other automobiles is counted as a resource. (See § 416.1201(c).)

[FR Doc. 05–2248 Filed 2–4–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–179]

RIN 1625–AA09

Drawbridge Operation Regulations; Mantua Creek, Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the S.R. 44 bridge over Mantua Creek, at mile 1.7, in Paulsboro, New Jersey. The bridge will be closed to navigation from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005. The extensive structural, mechanical, and electrical repairs and improvements necessitate this closure.

DATES: This rule is effective from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–179 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 12, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Mantua Creek, Paulsboro, NJ'' in the **Federal Register** (69 FR 60595). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) owns and operates the S.R. 44 Bridge over Mantua Creek in Paulsboro, NJ. The current regulations set out in 33 CFR 117.729 require the draw to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and shall open on signal

at all other times upon four hours notice.

Parsons Brinckerhoff, a design consultant, on behalf of NJDOT requested a temporary change to the existing regulations for the S.R. 44 Bridge over Mantua Creek to facilitate necessary repairs. The repairs consist of structural rehabilitation and various mechanical, electrical repairs and improvements. To facilitate repairs, the vertical lift span must be closed to vessel traffic from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005.

The Coast Guard has reviewed bridge opening data provided by the NJDOT. The data, from years 2000 to 2002, shows a substantial decrease in the numbers of bridge openings and vessel traffic transiting the area after the Labor Day weekend. Based on the data provided, the proposed closure dates will have minimal impact on vessel traffic.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We established this conclusion based on historical data, and on the fact that the closure dates support minimal impact due to the reduced number of vessels requiring transit through the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the

Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.729 is temporarily amended from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005 by suspending paragraph (b) and adding a new paragraph (c) to read as follows:

§ 117.729 Mantua Creek.

* * * * *

(c) From 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005, the S.R. 44 Bridge, mile 1.7, at Paulsboro, may remain closed to navigation.

Dated: January 25, 2005.

Sally Brice-O'Hara,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–2233 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD7–04–153]

RIN 1625–AA11

Regulated Navigation Area Removal; Brunswick, GA, Turtle River, in the Vicinity of the Sidney Lanier Bridge

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulated navigation area (RNA) in Brunswick, Georgia in the Turtle River in the vicinity of the Sidney Lanier Bridge. Due to the construction of the new Sidney Lanier Bridge and the removal of the old bridge structures, the maneuvers required by the RNA are no longer necessary to prevent allisions with the old bridge.

DATES: This rule is effective March 9, 2005.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Savannah, 100 W. Oglethorpe Ave., Suite 1017, JGL Federal Building, Savannah, GA 31401. USCG Marine Safety Office Savannah maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at USCG Marine Safety Office Savannah between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Aloysious Zealy, Planning Officer, MSO Savannah at 912–652–4353 ext. 240.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Due to the construction of the new Sidney Lanier Bridge, the widening of the channel, and the removal of the old bridge structure, the maneuver required by the current RNA is no longer necessary. Because the old Sidney Lanier Bridge no longer exists, an NPRM to remove the RNA is unnecessary. Similarly, it is unnecessary to delay the effective date of the regulation beyond the date of publication on the **Federal Register**.

Background and Purpose

The Regulated Navigation Area at 33 CFR 165.735 Brunswick, Georgia, Turtle River, Vicinity of Sidney Lanier Bridge was introduced in 1987 to improve navigational safety after the old Sidney Lanier Bridge had suffered allisions in 1972 and 1987. The close proximity of the bridge to the turn from the East River onto the Turtle River, in conjunction with the heavy current and narrow channel width, provided insufficient time for many vessels departing the East River, outbound for sea under the old Sydney Lanier Bridge, to properly shape up for safe transit. The RNA requires every vessel over 500 GRT departing the Port of Brunswick for sea to depart only from the Turtle River, except during flood tide. Vessels over 500 GRT departing for sea southbound down the East River negotiate a 129§ starboard turn, westward onto the Turtle River, transit up river to the turning basin to negotiate a 180° turn, and then transit down bound on the Turtle River through what was previously a 200′ wide restricted channel.

Due to the construction of the new Sidney Lanier Bridge and widening of the channel, the maneuver required by the current RNA is no longer necessary. The current navigation requirements of 33 CFR 165.735 pose a greater risk of a vessel casualty due to the now unnecessary complex maneuvering. The rule removes the maneuvers required by the current RNA and will reduce the transit time of vessels bound for sea from the East River. Due to the removal of the old bridge structures, no other navigational or safety requirements are necessary.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule removes navigation restrictions currently imposed on mariners and make transit easier and quicker. The anticipated beneficial result forms the basis for the determination that the economic impact will be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The current Regulated Navigation Area imposes restrictions on vessels transiting the area. The mariners who pilot the affected vessels have requested this rule. The impact of this rule will be a beneficial one as it removes

restrictions, improves safety and enhances navigability.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Aloysious Zealy, Planning Officer, MSO Savannah at 912–652–4353 ext. 240. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency?s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Paragraph (34)(g) applies because this rule disestablishes a Regulated Navigation Area, an action expressly recognized by paragraph (34)(g).

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.01–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.735 [Removed]

■ 2. Section 165.735 is removed.

Dated: January 21, 2005.

D. Brian Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–2237 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–008]

RIN 1625–AA00

Safety Zone; Upper Chesapeake Bay and Its Tributaries and the C & D Canal, Maryland, Virginia, and Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in all navigable waters of the Captain of the Port Baltimore zone. This safety zone is necessary to protect mariners from the hazards associated with ice. The temporary safety zone restricts vessels from transiting the zone during ice season, unless authorized by the Captain of the Port Baltimore, Maryland or designated representative through the issuance of broadcast notice to mariners and marine safety information bulletins.

DATES: This rule is effective from January 24, 2005 until April 15, 2005. Comments must be received on or before March 9, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–008 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Houck, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. While formation of ice generally occurs in the winter months, predicting when ice will begin to form, where it will be located and the thickness of the ice is difficult and depends on the weather conditions. Ice has just begun to form in the area of this safety zone. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with ice and to ensure the safety of the environment on the Upper Chesapeake Bay and its tributaries.

Request for Comments

Although we did not publish a notice of proposed rulemaking, we encourage you to participate in this rulemaking by submitting comments and related materials.

If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–008), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. A safety zone is a tool available to the Captain of the Port (COTP) to restrict and manage vessel movement when hazardous conditions exist. The COTP Baltimore is establishing a safety zone within all navigable waters within the COTP Baltimore zone, which will restrict access to only those vessels meeting conditions specified in broadcast notice to mariners and marine safety information bulletins.

Ice generally begins to form in the Upper Chesapeake Bay and its tributaries, including the Chesapeake and Delaware (C & D) Canal, in late December or early January. During a moderate or severe winter, ice in navigable waters can become a serious problem, requiring the use of federal, state and private ice breaking resources. The Commander, Coast Guard Activities Baltimore will use its COTP authority to promote the safe transit of vessels through ice-congested waters and the continuation of waterborne commerce throughout the winter season.

Ice fields in the Upper Chesapeake Bay and its tributaries move with prevailing winds and currents. Heavy ice buildups can occur in the C & D Canal, from Town Point Wharf to Reedy Point. Other areas that are commonly affected by high volumes of ice are, the Elk River, Susquehanna River, Patapsco River, Nanticoke River, Wicomico River, Tangier Sound, Pocomoke River and Sound, and the Potomac River. Once ice build up begins it can affect the transit of large ocean-going vessels.

Ice reports over the last several years have varied greatly on the Upper Chesapeake Bay and its tributaries. Historically, ice has been reported as NEW, FAST OR PACK ICE. The percentage of ice covering the river has been reported any where from 10% to 100%. The thickness has been reported any where from ½″ to 18″ thick.

Discussion of Rule

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. This rule establishes a safety zone encompassing all waters of the COTP Baltimore zone. The COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice as well as the ability of vessels to transit through the safety zone. Mariners allowed to travel through the safety zone with the permission of the COTP must maintain a minimum safe speed, in accordance with the Navigation Rules as seen in 33 CFR Chapter I, Subchapters D and E.

Ice Condition One means the emergency condition in which ice has largely covered the upper Chesapeake Bay and its tributaries, and the C & D Canal. Convoys are required and restrictions to shaft horsepower and vessel transit are imposed.

Ice Condition Two means the alert condition in which at least 2 inches of ice begins to form in the Upper Chesapeake Bay and its tributaries, and the C & D Canal. The COTP Baltimore may impose restrictions, including but not limited to, shaft horsepower and hull type restrictions.

Ice Condition Three means the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Upper Chesapeake Bay and its tributaries, and the C & D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored. (No

limitations on vessel traffic, hull type or shaft horsepower).

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have virtually no impact on any small entities. This rule does not require a general notice of proposed rulemaking and, therefore, it is exempt from the requirement of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 12211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–008 to read as follows:

§ 165.T05–008 Safety zone; Upper Chesapeake Bay and its tributaries and the C & D Canal, MD, VA and Washington, DC.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Captain of the Port, Baltimore zone.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessel traffic is prohibited in the safety zone unless they meet the requirements set forth by the Captain of the Port by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ).

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (410) 576–2693.

(3) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (410) 576–2693 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Baltimore, MD or designated representative.

(4) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ).

(5) Mariners granted permission to transit the safety zone must maintain the minimum safe speed necessary to maintain navigation as per 33 CFR Chapter I, Subchapters D and E.

(c) *Definitions.*

Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Ice Condition One means the emergency condition in which ice has largely covered the Upper Chesapeake Bay and its tributaries, and the C & D Canal. Convoys are required and restrictions to shaft horsepower and vessel transit are imposed.

Ice Condition Two means the alert condition in which at least 2 inches of ice begins to form in the Upper Chesapeake Bay and its tributaries, and the C & D Canal. The COTP Baltimore may impose restrictions, including but not limited to, shaft horsepower and hull type restrictions.

Ice Condition Three means the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Upper Chesapeake Bay and its tributaries, including the C & D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored. (No limitations on vessel traffic, hull type or shaft horsepower).

(d) *Effective period.* This section is effective from January 24, 2005 until April 15, 2005.

Dated: January 24, 2005.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–2218 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7869–5]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas, Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.

EFFECTIVE DATE: This final rule is effective February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214–4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214–4858.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes, which appeared in the **Federal Register** on July 1, 2004 (69 FR 40004). The affected regulations are codified at 40 CFR part 93. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small

governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (64 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 1, 2004, **Federal Register** notice.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 7, 2005. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 28, 2005.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7. U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C 241, 242b, 243, 246, 300f, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6002k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new entry to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Determining Coformity of Federal Actions to State or Federal Implementation Plans	
Part 93, subpart A	2060–0561
* * * * *	

[FR Doc. 05–2306 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0003; A–1–FRL–7863–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from portable fuel containers. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective April 8, 2005, unless EPA receives adverse comments by March 9, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0003 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov*.

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2004–ME–003'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal Holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in

EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal Holidays.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

II. Rulemaking Information

This section is organized as follows:

A. What Action Is EPA Taking?

EPA is approving Maine's Chapter 155, ''Portable Fuel Container Spillage Control,'' and incorporating this regulation into the Maine SIP.

B. What Are the Requirements of Maine's New Regulation?

Chapter 155 includes performance standards for portable fuel containers and spouts in order to ensure spill-proof systems. Chapter 155 prohibits any person to sell, supply, offer for sale, or manufacture for sale in Maine, on or after January 1, 2004, any portable fuel container or spout that does meet all of the specified performance standards. However, there is a one year sell-through period whereby containers and spouts manufactured before January 1, 2004 may be sold, supplied, or offered for sale until January 1, 2005. The rule also includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified performance standards.

C. Why Is EPA Approving Maine's Regulation?

EPA has evaluated Maine's Chapter 155 and has found that this regulation is consistent with EPA guidance and the OTC model rule for portable fuel containers. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum dated December 22, 2004, entitled ''Technical Support Document—Maine—Portable Fuel Containers Regulation'' (TSD). The TSD and Maine's Chapter 155 are available in the docket supporting this action.

As noted in the TSD, when Maine submitted this regulation for approval and incorporation by reference into the SIP, the state did not submit the word ''or'' in subsection 7(C) of Chapter 155.[1] In adopting Chapter 155, Maine was responding to a comment from EPA on this subsection in which EPA made it clear that any alternative test methods would have to be approved by both Maine DEP and EPA. DEP inadvertently used the formulation ''and/or'' to respond to EPA's comment, despite the fact that it is DEP's intent and commitment to EPA that any alternative test methods will have to be approved by both DEP and EPA Therefore, DEP deleted the word ''or'' from subsection 7(C) when DEP submitted it to EPA for approval to clarify DEP's intent in implementing this provision.

The OTC (Ozone Transport Commission) has developed model rules for several VOC source categories, and the OTC states, including Maine, have signed a memorandum of understanding (MOU) committing to adopt these model rules. One of the categories for which a model rule has been developed is portable fuel containers. (See ''OTC Model Rule: Portable Fuel Container Spillage Control,'' March 6, 2001.)

The OTC model rule for portable fuel containers was based on a similar rule adopted by the California Air Resources Board (CARB). Compliance with CARB's rule was due in January 2001. Several other OTC states have also recently adopted a portable fuel container rule based on the OTC model rule and EPA has already approved some of these states' rules.[2]

D. What Is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective April 8, 2005 without further notice unless the EPA receives adverse comments by March 9, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will

[1] Subsection 7(C) reads ''Alternative methods that are shown to be accurate, precise and appropriate may be used upon written approval of the Department and/or EPA.'' When submitting Chapter 155 to EPA for approval into the SIP, Maine deleted ''/or'' from this sentence.

[2] For example, EPA approved the portable fuel container rules adopted by New York and Maryland on January 23, 2004 (69 FR 3237), and June 29, 2004 (69 FR 38848), respectively.

not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 8, 2005 and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving Maine's Chapter 155, ''Portable Fuel Container Spillage Control,'' and incorporating this regulation into the Maine SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 12, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(53) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on December 29, 2003, October 22, 2004, and December 9, 2004.

(i) Incorporation by reference.

(A) Chapter 155 of the Maine Department of Environmental Protection Regulations, ''Portable Fuel Container Spillage Control,'' effective in the State of Maine on July 14, 2004, with the exception of the word ''or'' in Subsection 7C which Maine did not submit as part of the SIP revision.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding a new state citation, 155, to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	* *
155	Portable Fuel Container Spillage Control.	6/3/04	2/7/05	[Insert *FR* citation from published date].	(c)(53)	All of Chapter 155 is approved with the exception of the word ''or'' in Subsection 7C which Maine did not submit as part of the SIP revision.
*	*	*	*	*	*	* *

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–2060 Filed 2–4–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0194; FRL–7869–7]

RIN 2060–AL89

National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations, which were issued on February 27, 2002, under section 112 of the Clean Air Act (CAA). The direct final amendments clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for leather finishing operations if significant adverse comments are filed.

DATES: The direct final rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by February 17, 2005 or by February 22, 2005 if a public hearing is requested. If significant adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective, and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0194, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: air-and-r-docket@epa.gov.
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0194. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hardcopy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. William Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; facsimile number (919) 541–3470; electronic mail (e-mail) address: *schrock.bill@epa.gov*.

SUPPLEMENTARY INFORMATION: Since these rule amendments do not add substantive requirements and ease certain compliance obligations, EPA finds that there is good cause to make the rule amendments immediately effective upon the close of the comment period, within the meaning of 5 U.S.C. section 553(d).

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS * code	Examples of regulated entities
Industry	3161	Leather finishing operations.
	31611	Leather finishing operations.
	316110	Leather finishing operations.
Federal government	.....	Not affected.
State/local/tribal government	.....	Not affected.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.5285. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the direct final rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate significant adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the national emission standards for leather finishing operations if significant adverse comments are filed. If we receive any significant adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive significant adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 28, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the preamble to the direct final rule amendments.

I. Background

The EPA promulgated NESHAP for leather finishing operations on February 27, 2002 (67 FR 9156). The final rule (40 CFR part 63, subpart TTTT) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to those standards. Today's action includes direct final rule amendments to clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source.

A. Frequency of Testing for Product Process Type Categorization

We noticed that the promulgated standards were silent regarding how often an affected source will perform appropriate testing to properly categorize each finish application in one of four leather product process operations: (1) Upholstery operations with less than four grams of finish add-ons, (2) upholstery operations with four grams or more of finish add-ons, (3) water-resistant/specialty, and (4) nonwater-resistant. In the final rule, to determine whether a leather finish application is categorized as ''water-resistant'' or ''nonwater-resistant,'' you must use the Maeser Flexes test method on finished leather samples according to

American Society for Testing and Materials (ASTM) Designation D2099–00, or use an alternative testing method approved by the Administrator (40 CFR 63.5345–63.5350). We are amending the final rule to clarify that once you have determined that a unique finish application corresponds to one of the four product process operations, the applied finish categorization can remain valid for up to 5 years, provided there are no changes in the applied finish chemical characteristics. However, if the chemical characteristics of the applied finish change, or if you operate for 5 years with an unchanged applied finish formula, you must re-categorize the applied finish using appropriate testing procedures to document the leather product process operation to which the applied finish will correspond. Thus, once a leather finish application has been categorized through proper documentation, you will need to renew the categorization every 5 years or when the applied finish chemical characteristics change, whichever occurs sooner.

B. Revised Specialty Leather Definition

The definition of specialty leather in the final rule states that it is a select grade of chrome tanned, bark retanned, or fat liquored leather that is retanned through the application of greases, waxes, and oils in quantities greater than 25 percent of the dry leather weight. The specialty leather definition was added to the final rule after commenters to the proposed rule noted that leather that has been retanned with greater than 25 percent greases, fats, and oils requires finishing with coatings that contain more solvents and, therefore, more HAP to achieve proper adhesion of the finish to the leather and produce the color and textures the market demands.

While the definition in the final rule appeared to cover all the specialty leather produced at the time, one leather finishing company (Horween Leather Company) raised the issue that they finish leather that should meet the definition of ''specialty'' based on the amount of solvent they are required to use in the coatings. These products, however, did not meet the definition of specialty leather in the final rule. In fact, in order to produce some high-quality dress or performance shoe leathers, higher solvent-based finishes are required to provide the rich color, luster, or an oily/tacky feel demanded by the market. These leathers are produced by retanning with oils, fat, and greases of less than 25 percent which does not qualify them for the specialty leather category.

In a letter sent via a facsimile on December 3, 2002, Horween Leather provided EPA with technical information relating to the solvent content of the coatings required for their proposed specialty leather products and the oil, fat, and grease content of the retanned leather. This information clearly showed that higher solvent coatings were required to achieve satisfactory product qualities down to some oil, fat, and grease content of approximately 12 percent. EPA discussed this information with representatives of Horween, as well as with coatings experts for the leather industry, to determine whether alternatives for the higher solvent coatings could be used with lower oil, fat, and grease content leather and achieve the same results. After considering these discussions and reviewing the data, EPA determined that the only means of producing this leather with the lower fat, oil, and grease content and achieving the same results is by revising the specialty leather definition.

The revised specialty leather definition in the direct final rule amendments lowers the minimum percentage of applied grease, waxes, and oil used for retanning the leather to greater than 12 percent of the dry leather weight. This revision enables leather finishers to use the higher solvent coatings required to achieve the desired results since no other options exist. The Agency estimates that this change in definition will only affect one or two facilities that produce this specialty leather and will enable them to meet market demand for products with a lower fat, oil, and grease content. The fraction of leather produced at these facilities that will be affected by this change is estimated to be approximately 3 percent of their total amount of leather finished in a year. This change will therefore have the effect of moving this quantity of leather from the non-water resistant leather category with an emission limit of 3.7 pounds of HAP loss per 1,000 square feet of leather finished to the water resistant/specialty leather category with an emission limit of 5.6 pounds of HAP loss per 1,000 square feet of leather finished.

In addition to lowering the percentage of oil, fat, and grease, we are revising the specialty leather definition to also include high-quality dress or performance shoe leather that can withstand one or both of the following visual tests: Moisture injection into the leather using vacuum mulling without signs of blistering, or prolonged ironing at 200 °F for smoothing out surface roughness without finish lift off. As noted above, one of the reasons for using higher solvent coatings was to achieve a higher level of adhesion. Vacuum mulling and prolonged ironing are used as an indicator of coating adhesion to the leather substrate and are, therefore, being incorporated into the definition. Incorporating these criteria into a revised specialty leather definition allows for these mostly low-production quantities of high-quality dress or performance shoe leathers to be appropriately categorized as ''specialty leather'' products.

C. Alternative Procedure for Determining Actual Solvent Loss

After promulgation of the final rule, we received several comment letters on behalf of the trade organization, Leather Industries of America (LIA), and two leather finishing companies (Prime Tanning Company and S.B. Foot Tanning Company). The primary issue centered on the potential recordkeeping burden of a finish inventory log to determine the actual monthly solvent loss from an affected source. As stated in the final rule, each source must record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. The basis for this type of recordkeeping was that each source knew the chemical composition of each applied finish and was capable of measuring the amount of finish as applied to each leather product; thus, a ''measure-as-you-directly-apply'' approach appears generally reasonable.

Two leather finishing companies indicated that current company practices determine actual monthly solvent loss through mass balance calculations based on a detailed inventory of stored chemicals, at the beginning- and end-of-each month, and business purchasing records to indicate additions to the inventory of chemical supplies. Thus, the net loss of finishing solvents is determined by subtracting the end-of-the month chemical inventory from the beginning-of-the-month chemical inventory and adding the quantities of all chemicals purchased during the same 1-month period. Typically, a unique finish application is prepared by removing known quantities of chemicals from a storage location, and the unique finish is formulated in a separate location, commonly referred to as a mixing room. In situations when an excess amount of finish is formulated, the companies indicated that the excess amount is generally accounted for in the mass balance procedures as consumed by the process (*i.e.*, fugitive solvent loss). This assumption is often taken as a

simplifying step which results in a conservative and slightly overestimated measure of the solvent loss. Excess finish may eventually be used in other finish applications; thus, its use and consumption by the process may not be immediate. Nonetheless, the excess amount is immediately accounted for as a solvent loss.

In other situations, the companies indicated they may choose to dispose of the excess finish and make an appropriate adjustment in their corresponding mass balance calculations. If the disposed quantities of finish are small, the companies may choose to record the disposed quantity in the mass balance as consumed by the process (*i.e.*, fugitive solvent loss). Again, this assumption is a simplifying step which results in a conservative and slightly overestimated measure of the solvent loss. However, the companies may choose to record the quantity as disposed and remove the quantity from the mass balance, so it is neither listed as released to the air nor is the quantity of solvent listed as remaining in the inventory.

The two companies indicated it would cause an extreme labor and cost burden to change and implement a ''measure-as-you-directly-apply'' approach. Furthermore, they stated that their current ''mass balance'' approach is just as accurate in determining actual monthly solvent losses as the ''measure-as-you-directly-apply'' approach. Both of these leather finishing companies provided sufficient supporting documentation that their current solvent measurement procedures are capable of accurately determining the quantity of solvent finishes used each month and determining the mass fraction of HAP in the consumed solvent finishes.

Therefore, in today's action, we are allowing a monthly chemical inventory mass balance as an alternative procedure in 40 CFR 63.5335(b) for determining actual monthly HAP loss from an affected source. A monthly chemical inventory mass balance is appropriate, as long as the source follows its detailed mass balance procedures and calculations in its plan for demonstrating compliance, in accordance with 40 CFR 63.5325. Regardless of which approach is used to determine finish loss, each source is still required to maintain a written or printed log that documents the total quantity of solvents/finishes used each month in the process and the mass fraction of HAP in each solvent/finish.

II. Amendments to 40 CFR Part 63, Subpart TTTT

Today's action includes amendments that add an alternative procedure for determining the actual monthly solvent loss from an affected source, clarify the frequency in which leather product process types must be categorized, modify the definition of ''specialty leather,'' and add a definition for ''vacuum mulling.''

Section 63.5335 of 40 CFR part 63 is amended by adding a new alternative requirement for maintaining a finish application log based on a detailed chemical inventory mass balance. This was accomplished by splitting paragraph (b) into two subparagraphs to list the two acceptable methodologies for determining actual monthly solvent loss from an affected source. The revised paragraph (b)(1) includes the previous requirements for maintaining a log of finish types as they are applied to a leather product process. Previously, these requirements were listed in paragraphs (b)(1) through (7) of § 63.5335. However, the requirements have been redesignated, without any further changes, as paragraphs (b)(1)(i) through (vii). Paragraph (b)(2) of § 63.5335 includes the new alternative requirements for maintaining a finish application log based on a detailed chemical inventory mass balance.

Section 63.5345 is amended by adding paragraph (d) to clarify the frequency for the two types of upholstery product process operations which must be categorized.

Section 63.5350 is amended by clarifying the frequency for water-resistant and nonwater-resistant product process operations which must be categorized, incorporating the revised definition of specialty leather, and by providing alternative visual test criteria to support the categorization of high-quality dress or performance shoe leather as specialty leather. We have also clarified the frequency for categorizing specialty leather product process operations.

Section 63.5460 is amended by revising the definition for the term specialty leather and adding a definition for the term vacuum mulling.

III. Statutory and Executive Order Review

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the direct final rule amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action modifies a definition and adds a new definition to the final standards. It also adds an alternative option for determining HAP loss from the process. Since this action only clarifies the existing standards and adds an option, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0478 (EPA ICR No. 1985.02).

Copies of the Information Collection Request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impact of today's direct final rule amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The direct final rule amendments apply only to affected sources in the leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source and, therefore, impose no additional burden on sources. Therefore, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule amendments apply only to affected sources in the leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA, State and local governments, the EPA specifically solicits comment on the direct final rule amendments from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. The direct final rule amendments apply only to affected sources in the leather finishing industry and clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

The EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (2) concerns and

environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the direct final rule amendments have been determined not to be ''economically significant'' as defined under Executive Order 12866.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the direct final rule amendments. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the direct final rule amendments.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. The direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart TTTT—[AMENDED]

■ 2. Section 63.5335(b) is revised to read as follows:

§ 63.5335 How do I determine the actual HAP loss?

* * * * *

(b) Use one of the procedures listed in either paragraph (b)(1) or (b)(2) of this section for determining the actual HAP loss from your affected sources. Regardless of which procedure is used to determine HAP loss, each source is still required to maintain a written or printed log that documents the total quantity of solvents/finishes used each month in the process and the mass fraction of HAP in each solvent/finish.

(1) *Measure Finish as Applied.* Use a finish inventory log to record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. Figure 1 of this subpart shows an example log for recording the minimum information necessary to determine your finish usage and HAP loss. The finish inventory log must contain, at a minimum, the information for each type of finish applied listed in paragraphs (b)(1)(i) through (vii) of this section:

(i) Finish type;

(ii) Pounds (or density and volume) of each finish applied to the leather;

(iii) Mass fraction of HAP in each applied finish;

(iv) Date of the recorded entry;

(v) Time of the recorded entry;

(vi) Name of the person recording the entry;

(vii) Product process operation type.

(2) *Chemical Inventory Mass Balance.* Determine the actual monthly HAP loss from your affected source through mass balance calculations. You must follow your detailed mass balance procedures and calculations in your plan for demonstrating compliance in accordance with § 63.5325. The HAP mass balance must be based on a detailed inventory of stored chemicals at the beginning and end of each month, and business purchasing records to indicate additions to the inventory of chemical supplies. The net loss of chemicals used for finish applications is determined by subtracting the end of the month chemical inventory from the beginning of the month chemical inventory and adding the quantities of all chemicals purchased during the same 1-month period. In situations when an excess amount of finish is formulated, you must have documented procedures on how the excess amount is accounted for in the mass balance.

* * * * *

■ 3. Section 63.5345 is amended by adding paragraph (d) to read as follows:

§ 63.5345 How do I distinguish between the two upholstery product process operations?

* * * * *

(d) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product change, whichever is sooner.

■ 4. Section 63.5350 is amended as follows:

■ a. adding paragraph (b)(3),

■ b. revising paragraphs (c) introductory text and (c)(2), and

■ c. adding paragraphs (c)(3) and (c)(4).

§ 63.5350 How do I distinguish between the water-resistant/specialty and nonwater-resistant leather product process operations?

* * * * *

(b) * * *

(3) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product do change, whichever is sooner.

(c) To determine whether your product process operation produces specialty leather, you must meet the criteria in paragraphs (c)(1) and (2), or (c)(3) of this section:

* * * * *

(2) The leather must be retanned through the application of grease, waxes, and oil in quantities greater than 12 percent of the dry leather weight. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products may include, but are not limited to, specialty shoe leather and top grade football leathers.

(3) The leather must be a high-quality dress or performance shoe leather that can withstand one of the visual tests in paragraph (c)(3)(i) or (ii) of this section:

(i) Moisture injection into the leather using vacuum mulling without signs of blistering.

(ii) Prolonged ironing at 200° F for smoothing out surface roughness without finish lift off.

(4) For each leather product with a unique finish application, you must maintain records to support how the leather product was categorized to a product process operations type. You must repeat the leather product categorization to a product process operation type no less frequently than once every 5 years if the applied finish chemical characteristics of the leather product have not changed, or when the applied finish chemical characteristics of the leather product do change, whichever is sooner.

■ 5. Section 63.5460 is amended by revising the definition for the term ''Specialty leather'', and adding, in alphabetical order, a definition for the term ''Vacuum mulling'' to read as follows:

§ 63.5460 What definitions apply to this subpart?

* * * * *

Specialty leather means a select grade of chrome tanned, bark retanned, or fat liquored leather that is retanned through the application of grease, waxes, and oil in quantities greater than 12 percent of the dry leather weight or high-quality dress or performance shoe leather that can withstand one or more of the following visual tests: moisture injection into the leather using vacuum mulling without signs of blistering, or prolonged ironing at 200° F for smoothing out surface roughness without finish lift off. Specialty leather is also finished with higher solvent-based finishes that provide rich color, luster, or an oily/tacky feel. Specialty leather products are generally low volume, high-quality leather, such as specialty shoe leather and top grade football leathers.

* * * * *

Vacuum mulling means the injection of water into the leather substrate using a vacuum process to increase the moisture content of the leather.

* * * * *

[FR Doc. 05–2303 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA–04–005; FRL–7866–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Washington; Yakima County Nonattainment Area Boundary Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is taking final action to correct an error in the initial delineation of the boundary of the Yakima County nonattainment area (Yakima NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). This correction revises the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The excluded area will revert to an unclassifiable designation, consistent with the original and current designation of the Yakama Indian Reservation.

EFFECTIVE DATE: This rule is effective on March 9, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. WA–04–005. Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. This Docket facility is open from 8:30–4, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air, Waste and Toxics (OAWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–2970, or e-mail address: bonifacino.gina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us'' or ''our'' is used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background

On November 29, 2004, EPA solicited public comment on a proposal to correct the boundary of the Yakima County nonattainment area (Yakima NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) by excluding approximately six square miles of Yakama Indian Reservation land. Section 107(d)(4)(B) of the Clean Air Act (CAA or the Act) sets out the general process by which areas were to be designated nonattainment for the national ambient air quality standards (NAAQS) for PM–10 upon enactment of the 1990 Clean Air Act amendments. The Act states that each area that had been identified by EPA as a PM–10 Group I area [1] prior to the 1990 CAA Amendments is designated nonattainment for PM–10 by operation of the law upon enactment of the 1990 CAA Amendments. Prior to enactment of the 1990 CAA amendments, EPA published technical corrections clarifying the boundaries of concern for some of the areas previously identified as Groups I and II areas. See 55 FR 45799. October 31, 1990. With this action, the Yakima County Group I area was revised to correspond to a rectangular study area that encompassed

[1] Group I areas were areas that, at the time the particulate matter indicator was changed from total suspended particulate (TSP) to PM–10, were estimated to have a high probability of exceeding the PM–10 NAAQS.

the cities of Yakima, Selah, and Union Gap and surrounding areas. The revised Yakima County Group I area included approximately six square miles of fee land within the exterior boundaries of the Yakama Indian Reservation.

EPA now believes that it mistakenly construed then-existing air quality data and, as a consequence, incorrectly included this small portion of the Yakama Indian Reservation within the Yakima County Group I area that would later become the Yakima NAA. When EPA delineated the boundary of the Yakima County Group I area in 1990, EPA policy called for drawing the boundary based on political boundaries unless there was technical information identifying particular sources contributing to violations of the NAAQS that warranted a different approach. In other words, EPA policy called for not including land within the exterior boundaries of the Yakama Indian Reservation as part of the Yakima Group I area unless there was information showing that sources within the Yakama Indian Reservation contributed to the PM–10 violations recorded on state lands. At the time of the determination of the boundaries of the Yakima Group I area, which by operation of the law became the Yakima NAA, there was no technical information provided by Washington indicating that sources on the Yakama Indian Reservation contributed to the violations of the PM–10 NAAQS that had been recorded on monitors in the city of Yakima. EPA policy therefore called for using political boundaries to delineate the nonattainment area. As such, EPA erred in including a portion of the Yakama Indian Reservation in the Yakima NAA.

Accordingly, under the authority of section 110 (k) (6) of the CAA, EPA is revising the boundary of the Yakima NAA to exclude the portion within the exterior boundary of the Yakama Indian Reservation. A detailed description of our action was published in the **Federal Register** on November 29, 2004. See 69 FR 69338.

II. What Comments Did EPA Receive on the Proposed Action?

EPA received the following comments from one commenter on December 28, 2004.

Comment:

Although the PM–10 emissions originating within the portion of the Yakima PM–10 NAA south of Ahtanum Creek and within the exterior boundary of the Yakima Indian Reservation are minimal and did not contribute to the original classification of the NAA as a Group 1 area in 1987, we believe that other large rural and agricultural areas south and west of the City of Yakima that remain in the nonattainment area and that had similar land uses, population densities and commercial uses in 1987 also made a minimal contribution to the PM–10 emissions for the NAA. Air dispersion modeling documented in the 1989 and 1992 supplements indicates that the predicted highest values will generally occur in the City of Yakima. We believe the air dispersion modeling is an accurate presentation of the PM–10 distribution across the NAA, and request the proposed boundary revision to remove the area south of Ahtanum Creek of the NAA include all of the rural and agricultural lands in the NAA with similar land uses, population densities, commercial uses and transportation patterns to those of the tribal portion of the NAA.

Response:

As discussed in the proposal, EPA is basing its decision to revise the boundary of the Yakima NAA on its policy for determining the boundaries of PM–10 nonattainment areas, as well as air quality considerations. See 69 FR 69340. November 29, 2004. When EPA delineated the boundary of the Yakima County Group 1 area through technical corrections in 1990, EPA's policy called for using political boundaries associated with the area where the monitored violations occurred and in which it is reasonably expected that sources contributing to the violations are located. See 57 FR 43846, 43848 (September 22, 1992). The Yakima NAA includes the City of Yakima, as well as the cities of Selah and Union Gap and surrounding areas with sources contributing to the violations.[2] Together, the Cities of Selah, Union Gap and surrounding areas comprise a portion of Yakima County and therefore are within a single political boundary.

In contrast, the area south of Ahtanum Creek that is the subject of this action is within the boundary of the Yakama Indian Reservation, which is a different political jurisdiction than Yakima County. At the time of determination of the boundaries of the Yakima Group I area, there was no technical information provided by Washington indicating that sources on the Yakama Indian Reservation contributed to the violations of the PM–10 NAAQS that had been recorded on monitors in the city of Yakima. Because this area is a different political jurisdiction and did not contribute to the violations, EPA is correcting its error in including a portion of the Yakama Indian Reservation in the Yakima NAA. In contrast, the other rural and agricultural areas within Yakima County that the commenter seeks to remove from the NAA are subject to the same political jurisdiction as the area where the violations occurred.

Comment:

As an alternative to removing these state rural and agricultural lands from the NAA, the commenter requests that EPA determine that the area south of Ahtanum Creek be redesignated to attainment.

Response:

Section 107 (d) (3) (E) of the Clean Air Act, and the General Preamble to Title 1 (57 FR 13498) provide the criteria for designation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and standards dated September 4, 1992, Procedures for Processing Requests to Redesignate Areas to attainment. The criterion that the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act is among the criteria for redesignation outlined in this memo.

In a concurrent action published today, EPA is redesignating the Yakima NAA (with the boundary revised to exclude lands within the Yakama Indian Reservation) to attainment for PM–10. EPA refers the reader to a November 29, 2004 action proposing to approve the Limited Maintenance Plan entitled Yakima PM 10 Limited Maintenance Plan and Redesignation Request, Yakima County and the redesignation request for the Yakima NAA. *See* 69 FR 69342. Section 2.12 of the Limited Maintenance Plan, submitted by the State of Washington and approved by EPA in a concurrent action published today, states that the plan does not include the portion of the NAA within the exterior boundary of the Yakama Indian Reservation. In a concurrent action published today, EPA is clarifying that the SIP it is approving does not extend to lands which are within the boundaries of the Yakama Indian Reservation.

Therefore, the area within the Yakama Indian Reservation does not meet the criteria for redesignation to attainment. As discussed in the proposal, this area will revert to an unclassifiable designation.

III. Final Action

The Environmental Protection Agency is revising the boundary of the Yakima NAA to exclude the portion of the Yakima NAA that is within the exterior

[2] See the Technical Support Document for a discussion of these sources.

boundary of the Yakama Indian Reservation. This correction changes the boundary of the Yakima NAA to read as follows:

The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN, excluding the area within the exterior boundary of the Yakama Indian Reservation.

The excluded area will revert to an unclassifiable designation consistent with the original and current designation of the Yakama Indian Reservation.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects the description of a nonattainment area to exclude land that did not contribute to the nonattainment problem and was under a different regulatory jurisdiction and does not impose any additional requirements on state, local or tribal governments or the private sector. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action will remove a portion of the Yakama Indian Reservation from the Yakima NAA. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless consulted with representatives of tribal governments early in the process of developing this rule to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely corrects the description of a nonattainment area to exclude land that did not contribute to the nonattainment problem and was under a different regulatory jurisdiction and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 21, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81. 348 , the table entitled ''Washington–PM–10'' is amended by revising the entry for ''Yakima County'' table to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Yakima County ..... The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN, excluding the area within the exterior boundary of the Yakama Indian Reservation	11/15/90	Nonattainment	11/15/90	Moderate.
* * *	*	*	*	*

* * * * *

[FR Doc. 05–1994 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7865]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification letter addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National

Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VII				
Kansas:				
Manhattan, City of, Riley County and Pottawattamie County.	200300	January 3, 1974, Emerg; April 1, 1982, Reg; February 4, 2005, Susp.	Feb. 4, 2005	Feb. 4, 2005.
Odgen, City of, Riley County	200301	June 26, 1975, Emerg; October 15, 1981, Reg; February 4, 2005, Susp.	.....do	Do.
Riley County, Unincorporated Areas	200298	June 23, 1975, Emerg; April 1, 1982, Reg; February 4, 2005, Susp.	.....do	Do.
Nebraska: Battle Creek, Madison County	310145	March 7, 1975, Emerg; September 30, 1987, Reg; February 4, 2005, Susp.	.....do	Do.
Madison County, Unincorporated Areas	310455	July 25, 1977, Emerg; January 1, 1987, Reg; February 4, 2005, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 1, 2005.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 05–2257 Filed 2–4–05; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 04–289]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, we modify our rules to improve the effectiveness of the rural health care universal service support mechanism. Specifically, in this *Report and Order*, we change the Commission's definition of rural for the purposes of the rural health care support mechanism because the definition currently used by the Commission is no longer being updated with new Census Bureau data. We also revise our rules to expand funding for mobile rural health care services by subsidizing the difference between the rate for satellite service and the rate for an urban wireline service with a similar bandwidth. On reconsideration, we permit rural health care providers in states that are entirely rural, such as American Samoa, to receive support for advanced telecommunications and information services under section 254(h)(2)(A).

DATES: Effective April 8, 2005 except for §§ 54.609(e) and 54.621(c) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Regina Brown at (202) 418–0792 or Dana Bradford at (202) 418–1932, Wireline Competition Bureau, Telecommunications Access Policy Division, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, and *Order on Reconsideration*, in WC Docket No. 02–60 released on December 17, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. A companion *Further Notice of Proposed Rulemaking* in WC Docket No. 02–60 was also released on December 17, 2004.

I. Introduction

1. In this *Report and Order* and *Order on Reconsideration* (*Second Report and Order*), we modify our rules to improve the effectiveness of the rural health care universal service support mechanism. The mechanism provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Specifically, in this *Second Report and*

Order, we change the Commission's definition of rural for the purposes of the rural health care support mechanism because the definition currently used by the Commission is no longer being updated with new Census Bureau data. We also revise our rules to expand funding for mobile rural health care services by subsidizing the difference between the rate for satellite service and the rate for an urban wireline service with a similar bandwidth. Furthermore, we improve our administrative process by establishing a fixed deadline for applications for support. On reconsideration, we permit rural health care providers in states that are entirely rural to receive support for advanced telecommunications and information services under section 254(h)(2)(A).

II. Report and Order

A. Definition of ''Rural Area''

2. We conclude that the record supports the adoption of a new definition of ''rural area'' for the rural health care program. We received several proposals from commenters for a new definition of rural. Most of those definitions are currently used by other Federal agencies to determine eligibility for other Federal programs. As we explain in further detail below, we find that those proposals are either over-inclusive or under-inclusive for our purpose. That is, based on an evaluation of the proposals contained in the record, such definitions would allow more areas to be considered rural than is appropriate for the rural health care program or would not include areas that are appropriately rural. The Commission should neither dilute the fund by using a methodology that is too broad, nor fail to achieve the goals of the 1996 Act by using a methodology that is not broad enough. As such, the Commission has built on commenters' proposals to develop a slightly more layered approach that more accurately defines the rural areas eligible for support under the rural health care mechanism.

3. Whether an area is ''rural'' is determined by applying the following test. If an area is outside of any Core Based Statistical Area (CBSA), it is rural. Areas within CBSAs can be either rural or non-rural, depending on the characteristics of the CBSA. Small CBSAs—those that do not contain an urban area with populations of 25,000 or more—are rural. Within large CBSAs—those that contain urban areas with populations of 25,000 or more—census tracts can be either rural or non-rural depending on the characteristics of the particular census tract. If a census tract in a large CBSA does not contain any part of a place or urban area with a population greater than 25,000, then that tract is rural. Alternatively, if a census tract in a large CBSA contains all or part of a place or urban area with a population that exceeds 25,000, then it is not rural.

4. To eliminate any confusion regarding implementation of this definition, the Commission will identify the areas that are rural and post the list on the Universal Service Administrative Company (USAC) Web site, as is done now. The list will include counties that are rural or partially rural. As now, for those counties that are partially rural, eligible census tracts will be listed. Applicants can determine their census tract using the link on the USAC web site or by calling USAC's helpline for assistance. As such, the process for rural health care providers to determine their eligibility will be the same with the new definition as with the definition currently in use. The new definition will be effective as of Funding Year 2005, which begins July 1, 2005.

5. The new definition of rural area furthers the goals of section 254 for several reasons. Our new definition uses a methodology similar to our current definition. Just like our prior definition, all counties that are not located in a CBSA are defined as rural. For those counties located in a CBSA, as under the current definition, a further analysis is conducted for certain counties that have both urban and rural areas. The Goldsmith methodology, however, only called for such further analysis for counties comprising a larger geographic area, while our new definition expands the review to include counties of all sizes. As such, we believe our new definition improves upon the method that we previously used to determine which areas are rural by more accurately carving out the rural areas within counties that are located in a CBSA. For example, Dungannon, Virginia, which has a population of 317, is located in the northeastern corner of Scott County, Virginia. Though Scott County is part of the Kingsport-Bristol-Bristol, TN-VA Metropolitan Statistical Area, Dungannon is 28 miles—about an hour drive—from Kingsport, TN, the nearest large urban area. Under our previous definition, Dungannon was not rural because it was located in a small county that was part of an MSA. Under our new definition, however, we conduct a more granular review of Scott County at the census tract level. The census tract in which Dungannon is located does not contain any part of a place or urban area with greater than a 25,000 population. Therefore, Dungannon is rural, and any health care provider located in Dungannon is eligible for support.

6. We selected 25,000 as the population threshold for the further analysis. While choosing the threshold is not an exact science, we believe urban areas above this size possess a critical mass of population and facilities. Although this standard may mean that some current eligible providers might no longer qualify, as noted below, we permit all health care providers that have received a funding commitment from USAC since 1998 to continue to qualify for funding for the next three years under the old definition. As we noted above, our new definition also allows rural health care providers to determine their eligibility in the same manner as under the old definition. Furthermore, because the definitions are similar, rural health care providers will not have to adjust to a new application process. An approach that simplifies the application process for rural health care providers will help ensure that applicants will not be deterred from applying for support due to administrative burdens.

7. To ease the transition to the new definition, we permit all health care providers that have received a funding commitment from USAC since 1998 to continue to qualify for support under the universal service mechanism for health care providers for funding for the next three years under the old definition. Thereafter, health care providers must qualify under our new definition to receive funding. We find that this transition period is necessary to allow rural health care providers to plan for the elimination of support. In addition, the transition period will allow the Commission time to review the effect of this definition.

Support for Satellite Services for Mobile Rural Health Care Providers

8. Pursuant to section 254(h)(1)(A) of the Act, telecommunications carriers must provide telecommunications services to rural health care providers at ''rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' Under the Commission's prior policies, the cost of rural satellite service was compared to the cost of urban satellite service. For satellite services, however, the price typically does not vary by location. Therefore rural health care providers did not receive discounts on such service under the rural health care program. In the 2003 *Report and Order*, 68 FR 74492, December 24, 2003, we revised this policy to allow rural health care providers to receive discounts for satellite service even where wireline

services are available, but we capped the discount at the amount providers would have received if they purchased functionally similar wireline alternatives.

9. The situation of the mobile rural health care provider, however, is different. By definition, mobile rural health care providers do not stay in a fixed location. To receive telecommunications services, they would either have to install a wireline telecommunications service to every location they serve or use a satellite or other mobile service that can function in every location. In some cases, wireline services are not available because the locations are so remote. Even if a wireline service is technically available, the number of locations served results in what otherwise might be a more expensive satellite service becoming more cost-effective and more efficient. In those situations, as commenters note, for practical purposes no wireline service is available, so rural health care providers must use a satellite or other mobile telecommunications service.

10. *Cost benchmark for mobile rural health care provider.* Accordingly, after reviewing the record in this proceeding, we revise our rules to allow mobile rural health care providers to receive discounts for satellite services calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. We will not cap the discount for the satellite service at an amount of a functionally similar wireline alternative for mobile rural health care providers. We conclude that this revision furthers the principle of competitive neutrality and recognizes the role that telecommunications services play in rural areas without unduly increasing the size of the fund. Further, consistent with section 254, it helps to provide an affordable rate for the services necessary for telemedicine in rural America, strengthens telemedicine and telehealth networks across the nation, helps improve the quality of health care services available in rural America, and better enables rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease.

11. *Criteria for mobile rural health care providers.* Our current rules, combined with the requirement that health care providers remain responsible for a significant portion of service costs (*i.e.*, the urban rate), are adequate to ensure that rural health care providers select the most cost-effective services and will ensure that rural health care providers make prudent economic decisions. We agree, however, with commenters that suggest that certain parameters or procedures should be established for determining what constitutes a ''mobile'' rural health care provider so that providers cannot obtain satellite services where such services are not the most cost-effective option.

12. Because we believe some threshold must be established, however, mobile rural health care providers will be required to submit to USAC the number of sites the mobile rural health care provider will serve during the year. Where a mobile rural health care provider serves eight or more different sites in a year, we will presume that satellite services are most cost-effective. We conclude that where a mobile rural health care provider serves less than eight different sites per year, the mobile health care provider will be required to document and explain why satellite services are necessary to achieve the health care delivery goals of the mobile telemedicine project. In instances where a mobile rural health care provider serves less than eight different sites per year, USAC will determine on a case-by-case basis whether the telecommunications service selected by the mobile rural health care provider is the most cost-effective option for the telemedicine project in light of the limited number of sites served per year.

13. Additionally, mobile rural health care providers seeking discounts for satellite services will be required to certify that they are serving eligible rural areas. Providers must keep annual logs indicating: (i) The date and locations of each clinic stop; and (ii) the number of patients served at each such clinic stop. Mobile rural health care providers must maintain their annual logs for a period of five years and make such logs available to the Administrator and the Commission upon request.

14. In order to receive the discount, mobile rural health care providers will be required to provide to USAC documentation of the price for bandwidth equivalent wireline services in the urban area in the state to be covered by the project. Where a telemedicine project serves locations in different states, the provider must provide the price for bandwidth equivalent wireline services in the urban area, proportional to the locations served in each state. The method of cost allocation chosen by an applicant should be based on objective criteria, and reasonably reflect the eligible usage of the mobile health clinic. Where mobile rural health care provider is also serving patients in urban areas, prorated discounts will be provided commensurate only with the time the mobile rural health care provider is serving patients in rural areas. We also direct USAC to evaluate the allocation methods selected by program participants in the course of its audit activities to ensure program integrity and to ensure that providers are complying with the program's certification requirements. Additionally, pursuant to section 54.619(a) of the commission's rules, providers providing mobile health services must maintain records for their purchases of supported services for at least five years sufficient to document their compliance with all Commission requirements.

Deadline Established for Filing FCC Form 466

15. In the 2002 *NPRM*, 67 FR 34653, May 15, 2002 and 2003 *Report and Order,* 68 FR 74492, December 24, 2003, we sought comment on ways to streamline the application process. We establish June 30 as the final deadline for filing FCC Forms 466 and 466–A for health care providers seeking discounts for a specific funding year under the rural health care universal service support mechanism. We conclude that providing an established deadline will provide specificity and finality to rural health care providers and will not require them to continue to check for Commission public notices. This deadline is also consistent with USAC's Rural Health Care Division (RHCD)'s efforts to provide specific guidance to health care providers when submitting applications for universal service support. Applicants have more than a year to submit the necessary documentation for their application for support. In addition, a deadline of June 30 for filing FCC Forms 466 and 466–A coincides with the end of the funding year. Under section 54.623 of our rules, USAC can still set the dates for the filing window for purposes of the annual cap.

III. Order on Reconsideration

16. We grant, to the extent indicated herein, ASTCA's Petition for Reconsideration of the 2003 *Report and Order,* 68 FR 74492, December 24, 2003. In light of the compelling and unique combination of circumstances facing ''entirely rural'' states, we believe that it is appropriate to establish a support mechanism under section 254(h)(2)(A) that will provide funding for the provision of advanced telecommunications and information services. We therefore amend our rules to provide support to health care providers in states that are ''entirely rural'' equal to 50 percent of the monthly cost of advanced telecommunications and information

services reasonably related to the health care needs of the facility.

17. We find that the Commission has authority to amend its rules for these specific circumstances under section 254(h)(2)(A). Section 254(h)(2)(A) directs the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services for health care providers. Section 254(h)(2)(A) gives the Commission broad authority to fulfill this statutory mandate. Unlike Congress' directive to the Commission in section 254(h)(1)(A), however, the Commission's authority under section 254(h)(2)(A) is discretionary, not mandatory. We find that there is a special need for the Commission to use its discretion to establish rules that will enhance access to advanced telecommunications and information services for health care providers in entirely rural states.

18. This support is necessary to address the unique circumstances faced by health care providers and telecommunications carriers serving American Samoa and other similarly situated geographic areas. Geographic isolation and the lack of adequate local resources in ''entirely rural'' states can be mitigated by the availability and use of modern technology. Facilitating access to advanced telecommunications and information services would improve health care in geographically remote areas.

19. Section 254(h)(2)(A) directs the Commission to enhance access to advanced telecommunications and information services to the extent technically feasible and economically reasonable. We find that providing universal service support to these specific health care providers is technically feasible and economically reasonable. There is no dispute that access to advanced telecommunications and information services is technically feasible in these areas. In fact, such services are currently being provided. We believe our actions to enhance access are also economically reasonable. We do not believe this discount will significantly increase distributions from the underutilized rural health care fund because the number of eligible entities is so small. The funding amount also is unlikely to significantly increase in the future because the current list of eligible entirely rural areas is not likely to change.

20. Furthermore, we do not think that section 254(h)(1)(A) prohibits us from establishing this support. In the 2003 *Report and Order,* 68 FR 74492, December 24, 2003 the Commission determined that section 254(h)(2)(A) was linked to section 254(h)(1)(A), such that funding for advanced telecommunications services must also be based on the urban-rural rate comparison for telecommunications services found in section 254(h)(1)(A). Upon further review, however, we conclude that the two statutory provisions are not inextricably linked. The methodology we use to calculate support under section 254(h)(2)(A), therefore, does not have to be based on the urban-rural comparison.

21. Section 254(h)(2)(A), however, does not establish a methodology for calculating universal service support. The Commission provides a flat discount for Internet access for all eligible rural health care providers pursuant to section 254(h)(2)(A). We find that it is reasonable to use a similar methodology for support for entirely rural areas because we are relying on the same statutory provision. Therefore, we establish a 50 percent discount off the commercial rate for the purchase of advanced telecommunications and information services for states that are ''entirely rural.'' We emphasize that the *entire* state must meet the definition of rural, as described above, to be eligible to receive the 50 percent discount. Consistent with the Commission's principles of competitive neutrality, eligible health care providers may receive increased discounts for any advanced telecommunications and information service, regardless of the platform.

IV. Procedural Matters

A. Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2003 *Further Notice of Proposed Rulemaking,* 68 FR 74538, December 24, 2003. The Commission sought public comments on the proposals in the *Further Notice of Proposed Rulemaking,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

B. Need for, and Objectives of, the Second Report and Order

23. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. Over the last few years, important changes in the rural health community, such as technological advances and the increasing variety of needs of the rural health care community, have prompted us to review the rural health care universal service support mechanism. In this *Second Report and Order,* we adopt several modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism and increase utilization of this mechanism by rural health care providers.

24. Specifically, in this *Second Report and Order,* we change the Commission's definition of rural for the purposes of the rural health care support mechanism because the definition currently used by the Commission is no longer being updated with new Census Bureau data by the Office of Rural Health Care Policy, the agency that developed the definition. Specifically, the new definition improves upon the previous method of determining which areas are rural by more accurately identifying the rural areas within counties. We also revise our rules to allow mobile rural health care providers to receive discounts for satellite services calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Mobile rural health care providers travel to remote areas of the country to deliver health care services to underserved populations for particular health conditions that may go unnoticed or untreated due to the lack of health care facilities in such areas. Thus, this approach will provide the support necessary to make mobile telemedicine economical for rural health care providers to provide health care to rural and remote areas, and to make telecommunications rates for public and non-profit rural health care providers comparable to those paid in urban areas. Furthermore, to provide specificity and finality to rural health care providers, we improve our administrative process by establishing a fixed deadline for applications for support.

25. On reconsideration, we permit rural health care providers in states that are entirely rural, such as American Samoa, to receive support for advanced telecommunications and information services under section 254(h)(2)(A). Under the Commission's current policy, health care providers in these areas do not receive universal service funding for the provision of telecommunications services because no urban-rural rate

difference exists within the state or territory upon which to base the discount calculation. Telemedicine and other forms of treatment supported by advanced telecommunications services and information services eliminate the need for referrals to other locations by allowing local physicians to consult much more easily and frequently with physicians at fully equipped health care facilities. We expect this rule change will strengthen the ability of health care providers in states and territories that are entirely rural to provide critical health care services and improve health care for rural residents.

26. We believe that such actions will improve significantly the ability of rural health care providers to respond to the medical needs of their communities, provide needed aid to strengthen telemedicine and telehealth networks across the nation, help improve the quality of health care services available in rural America, and better enable rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease. In addition, these changes will equalize access to quality health care between rural and urban areas and will support telemedicine networks if needed for a national emergency. Enhancing access to an integrated nationwide telecommunications network for rural health care providers will further the Commission's core responsibility to make available a rapid nationwide network for the purpose of the national defense, particularly with the increased awareness of the possibility of terrorist attacks. Finally, these changes will further the Commission's efforts to improve its oversight of the operation of the program to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

27. No petitions for reconsideration or comments were filed directly in response to the IRFA or on issues affecting small businesses.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

28. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

a. Rural Health Care Providers

29. Section 254(h)(5)(B) of the Act defines the term ''health care provider'' and sets forth seven categories of health care providers eligible to receive universal service support. Although the SBA has not developed a specific size category for small, rural health care providers, recent data indicate that there are a total of 8,297 health care providers, consisting of: (1) 625 ''post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;'' (2) 866 ''community health centers or health centers providing health care to migrants;'' (3) 1633 ''local health departments or agencies;'' (4) 950 ''community mental health centers;'' (5) 1951 ''not-for-profit hospitals;'' and (6) 2,272 ''rural health clinics.'' We have no additional data specifying the numbers of these health care providers that are small entities nor do we know how many are located in areas we have defined as rural. In addition, non-profit entities that act as ''health care providers'' on a part-time basis are eligible to receive prorated support and we have no ability to quantify how many potential eligible applicants fall into this category. However, we have no data specifying the number of potential new applicants. Consequently, using the data we do have, we estimate that there are 8,297 or fewer small health care providers potentially affected by the actions proposed in this Notice.

30. As noted earlier, non-profit businesses and small governmental units are considered ''small entities'' within the RFA. In addition, we note that census categories and associated generic SBA small business size categories provide the following descriptions of small entities. The broad category of Ambulatory Health Care Services consists of further categories and the following SBA small business size standards. The categories of small business providers with annual receipts of $6 million or less consists of: Offices of Dentists; Offices of Chiropractors; Offices of Optometrists; Offices of Mental Health Practitioners (except Physicians); Offices of Physical, Occupational and Speech Therapists and Audiologists; Offices of Podiatrists; Offices of All Other Miscellaneous Health Practitioners; and Ambulance Services. The category of small business Ambulatory Health Care Services providers with $8.5 million or less in annual receipts consists of: Offices of Physicians; Family Planning Centers; Outpatient Mental Health and Substance Abuse Centers; Health Maintenance Organization Medical Centers; Freestanding Ambulatory Surgical and Emergency Centers; All Other Outpatient Care Centers, Blood and Organ Banks; and All Other Miscellaneous Ambulatory Health Care Services. The category of Ambulatory Health Care Services providers with $11.5 million or less in annual receipts consists of: Medical Laboratories; Diagnostic Imaging Centers; and Home Health Care Services. The category of Ambulatory Health Care Services providers with $29 million or less in annual receipts consists of Kidney Dialysis Centers. For all of these Ambulatory Health Care Service Providers, census data indicate that there is a combined total of 345,476 firms that operated in 1997. Of these, 339,911 had receipts for that year of less than $5 million. In addition, an additional 3,414 firms had annual receipts of $5 million to $9.99 million; and additional 1,475 firms had receipts of $10 million to $24.99 million; and an additional 401 had receipts of $25 million to $49.99 million. We therefore estimate that virtually all Ambulatory Health Care Services providers are small, given SBA's size categories. We note, however, that our rules affect non-profit and public healthcare providers, and many of the providers noted above would not be considered ''public'' or ''non-profit.'' In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

31. The broad category of Hospitals consists of the following categories and the following small business providers with annual receipts of $29 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals; and Specialty (Except Psychiatric and Substance Abuse) Hospitals. For all of these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than $25 million. An additional 45 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

32. The broad category of Social Assistance consists of the category of Emergency and Other Relief Services and small business size standard of annual receipts of $6 million or less. For all of these health care providers, census data indicates that there are a combined total of 37,778 firms that operated in 1997. Of these, 37,649 or fewer firms had annual receipts of below $5 million. An additional 73 firms had annual receipts of $5 million to $9.99 million. We therefore estimate that virtually all Social Assistance providers are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

b. Providers of Telecommunications and Other Services

33. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

34. *Total Number of Telephone Companies Affected.* The Wireline Competition Bureau reports that, as of October 22, 2003, there were 4,748 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,748 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that 4,748 or fewer telephone service firms are small entity telephone service firms that may be affected by the decisions and rules adopted in this Report and Order.

35. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers having less than 1,500 employees. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499–A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 454 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Report and Order.

36. *Internet Service Providers.* The SBA has developed a small business size standard for ''On-Line Information Services,'' NAICS code 518111. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under this small business size standard, a small business is one having annual receipts of $21 million or less. Based on firm size data provided by the Bureau of the Census, 3,123 firms are small under SBA's $21 million size standard for this category code. Although some of these Internet Service Providers (ISPs) might not be independently owned and operated, we are unable at this time to estimate with greater precision the number of ISPs that would qualify as small business concerns under SBA's small business size standard. Consequently, we estimate that there are 3,123 or fewer small entity ISPs that may be affected.

37. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. According to SBA regulations, a small business under the category of Satellite communications is one having annual receipts of $12.5 million or less. According to SBA's most recent data, there are a total of 371 firms with annual receipts of $9,999,999 or less, and an additional 69 firms with annual receipts of $10,000,000 or more. Thus, the number of Satellite Telecommunications firms that are small under the SBA's $12 million size standard is between 371 and 440. Further, some of these Satellite Service Carriers might not be independently owned and operated. Consequently, we estimate that there are fewer than 440 small entity ISPs that may be affected by the decisions and rules of the present action.

38. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules.

39. *Vendors of Infrastructure Development or ''Network Buildout.''* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. The closest applicable definition of a small entity are the size standards under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment.'' According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most recent available Census Bureau data indicates that there are 1,187 establishments with fewer than 1,000

employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that the majority of the 1,458 internal connections manufacturers are small.

40. *Cable and Other Program Distribution.* The SBA has developed a small business size standard which includes all such companies generating $12.5 million or less in revenue annually. This standard covers Cable and Other Program Distribution. Only businesses in Cable and Other Program Distribution category can be affected by the rules and policies adopted herein. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. This *Second Report and Order* adopts several modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism and increase utilization of this mechanism by rural health care providers. First, as articulated above, in this *Second Report and Order,* we change the Commission's definition of rural for the purposes of the rural health care support mechanism. The new definition will not impact reporting or recordkeeping requirements. It does, however, change the overall pool of eligible applicants. Second, this *Second Report and Order* expands funding for mobile rural health care services by subsidizing the difference between the actual rate of satellite service for mobile rural health care providers and the rate for an urban wireline service with a similar bandwidth. Because mobile rural health care providers will now be eligible for support, we adopt rules requiring such providers to submit an estimated number of sites the mobile health care provider will serve during the year. Additionally, mobile rural health care providers seeking discounts for satellite services will be required to certify that they are serving eligible rural areas. Providers must keep annual logs indicating: (i) The date and locations of each clinic stop; and (ii) the number of patients served at each such clinic stop. Mobile rural health care providers must maintain their annual logs for a period of five years and make such logs available to the Administrator and the Commission upon request. Further, in order to receive the discount, mobile rural health care providers will be required to provide to USAC documentation of the price for bandwidth equivalent wireline services in the urban area in the state to be covered by the project.

42. These reporting and recordkeeping requirements will minimally impact both small and large entities. However, even though the minimal impact may be more financially burdensome for smaller entities, the minimal impact of such requirements is outweighed by the benefit of providing support necessary to make mobile telemedicine economical for rural health care providers to provide health care to rural and remote areas, and to make telecommunications rates for public and non-profit rural health care providers comparable to those paid in urban areas. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach impacting small business, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

44. In this *Second Report and Order,* we amend our rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. The actions taken in this *Second Report and Order* help improve health care services available in rural America, and better enable rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease. Thus, rural health care providers stand to benefit directly from the modifications to our rules and policies.

45. We have taken the following steps to minimize the impact on small entities. First, to ease the transition to the new definition, we permit all health care providers that have received a funding commitment from USAC since 1998 to continue to qualify for funding for the next three years under the old definition. Thereafter, health care providers must qualify under our new definition to receive funding. We find that this transition period is necessary to allow rural health care providers to plan for the elimination of support. The alternative of not providing for a transition period was considered but rejected because we believe a transition period is necessary to allow rural health care providers to plan for the elimination of support, thus minimizing any adverse or unfair impact on smaller entities. In addition, this transition period will allow us time to review the effect of this definition on smaller entities. Second, our new definition allows rural health care providers to determine their eligibility in the same manner as under the old definition. Because the old and new definitions are similar, rural health care providers will not have to adjust to a new application process. The alternative of not allowing rural health care providers to determine their eligibility in the same manner was also considered but rejected because we wanted to minimize confusion on the part of applicants. An approach that simplifies the application process for rural health care providers will help ensure that applicants, including small entities, will not be deterred from applying for support due to administrative burdens. Lastly, for mobile rural health care services, we have established a presumption that will minimize administrative burdens for all applicants, including smaller entities. Mobile rural health care providers will be required to submit to USAC an estimated number of sites the mobile rural health care provider will serve during the year. Where a mobile rural health care provider serves eight or more sites in a year, we will presume

that satellite services are most cost-effective and we will not require a further showing from such providers.

G. Report to Congress

46. The Commission will send a copy of this *Report and Order* and *Order on Reconsideration* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order* and *Order on Reconsideration* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Report and Order* and *Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

H. Paperwork Reduction Act Analysis

47. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

48. In this present document, we have assessed the effects of the measures adopted to protect against waste, fraud and abuse in the administration of the rural health care universal service support mechanism. We find that the modified information and record retention requirements for mobile rural health care providers and the modified certification requirements for health care providers in states that are entirely rural will not be unduly burdensome on small businesses.

49. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *qualexint@aol.com.*

I. Further Information

50. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.* This Order can also be downloaded in Microsoft Word and ASCII formats at *http://www.fcc.gov/ccb/universalservice/highcost.*

51. For further information, contact Regina Brown at (202) 418–0792 or Dana Bradford at (202) 418–1932, in the Telecommunications Access Policy Division, Wireline Competition Bureau.

V. Ordering Clauses

52. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Report and Order* and *Order on Reconsideration,* is adopted.

53. Pursuant to the authority contained in section 405, of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, American Samoa Telecommunications Authority's Petition for Reconsideration is granted to the extent indicated herein.

54. It is further ordered that part 54 of the Commission's rules, 47 CFR part 54, except §§ 54.609 and 54.619 which will become effective upon Office of Management and Budget approval, is amended as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this *Report and Order* and *Order on Reconsideration* in the **Federal Register**.

55. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order* and *Order on Reconsideration* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Health Facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.5 by revising the definition of ''Rural area'' to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Rural area. For purposes of the schools and libraries universal support mechanism, a ''rural area'' is a nonmetropolitan county or county equivalent, as defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB, or any contiguous non-urban Census Tract or Block Numbered Area within an MSA-listed metropolitan county identified in the most recent Goldsmith Modification published by the Office of Rural Health Policy of the U.S. Department of Health and Human Services. For purposes of the rural health care universal service support mechanism, a ''rural area'' is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. ''Core Based Statistical Area'' and ''Urban Area'' are as defined by the Census Bureau and ''Place'' is as identified by the Census Bureau.

* * * * *

■ 3. Amend § 54.601 by adding paragraphs (a)(3)(i), (a)(3)(ii), and (c)(3) to read as follows:

§ 54.601 Eligibility.

(a) * * *

(3) * * *

(i) Any health care provider that was located in a rural area under the definition used by the Commission prior to July 1, 2005, and that had received a funding commitment from USAC since 1998, shall continue to qualify for support under the universal service mechanism for health care providers for a period of three years, beginning July 1, 2005.

(ii) [Reserved]

* * * * *

(c) * * *

(3) Advanced telecommunications and information services as provided under § 54.621.

* * * * *

■ 4. Amend § 54.609 by adding paragraph (e) to read as follows:

§ 54.609 Calculating support.

* * * * *

(e) *Mobile rural health care providers.* (1) *Calculation of support.* Mobile rural health care providers may receive discounts for satellite services calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Discounts for satellite services shall not be capped at an amount of a functionally similar wireline alternative. Where the mobile rural health care provider provides service in more than one state, the calculation shall be based on the urban areas in each state, proportional to the number of locations served in each state.

(2) *Documentation of support.* (i) Mobile rural health care providers shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services in the urban area in the state or states where the service is provided. Mobile rural health care providers shall provide to the Administrator the number of sites the mobile health care provider will serve during the funding year.

(ii) Where a mobile rural health care provider serves less than eight different sites per year, the mobile rural health care provider shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services. In such case, the Administrator shall determine on a case-by-case basis whether the telecommunications service selected by the mobile rural health care provider is the most cost-effective option. Where a mobile rural health care provider seeks a more expensive satellite-based service when a less expensive wireline alternative is most cost-effective, the mobile rural health care provider shall be responsible for the additional cost.

■ 5. Amend § 54.615 by revising paragraph (c)(2) to read as follows:

§ 54.615 Obtaining services.

* * * * *

(c) * * *

(2) The requester is physically located in a rural area, unless the health care provider is requesting services provided under § 54.621; or, if the requester is a mobile rural health care provider requesting services under § 54.609(e), that the requester has certified that it is serving eligible rural areas.

* * * * *

■ 6. Amend § 54.619 by revising paragraph (a) to read as follows:

§ 54.619 Audits and recordkeeping.

(a) *Health care providers.* (1) Health care providers shall maintain for their purchases of services supported under this subpart documentation for five years from the end of the funding year sufficient to establish compliance with all rules in this subpart. Documentation must include, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities, if applicable. Mobile rural health care providers shall maintain annual logs indicating: The date and locations of each clinic stop; and the number of patients served at each such clinic stop.

(2) Mobile rural health care providers shall maintain its annual logs for a period of five years. Mobile rural health care providers shall make its logs available to the Administrator and the Commission upon request.

* * * * *

■ 7. Amend § 54.621 by adding paragraph (c) to read as follows:

§ 54.621 Access to advanced telecommunications and information services.

* * * * *

(c) Health care providers located in States that are entirely rural shall be eligible to receive universal service support equal to 50 percent of the monthly cost of advanced telecommunications and information services reasonably related to the health care needs of the facility.

■ 8. Amend § 54.623 by revising paragraphs (a), (b), (c)(2), and (c)(3) to read as follows:

§ 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be $400 million per funding year, with the following exceptions.

(b) *Funding year.* A funding year for purposes of the health care providers cap shall be the period July 1 through June 30.

(c) * * *

(2) For each funding year, which will begin on July 1, the Administrator shall implement a filing period that treats all health care providers filing within that period as if they were simultaneously received. The filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator.

(3) The Administrator may implement such additional filing periods as it deems necessary. The deadline for all required forms to be filed with the Administrator is June 30 for the funding year that begins on the previous July 1.

* * * * *

[FR Doc. 05–2269 Filed 2–4–05; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2003–D063]

Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise text regarding identification of contract awards under the Small Business Competitiveness Demonstration Program. This rule is a result of an initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2003–D063.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at

http://www.acq.osd.mil/dpap/dfars/transf.htm.

This final rule is a result of the DFARS Transformation initiative. Section 19.1007(a)(2) of the Federal Acquisition Regulation requires inclusion of a statement on the face page of each contract awarded under the Small Business Competitiveness Demonstration Program, to identify the contract as an award under the Program. To accommodate the use of automated systems, this final rule specifies that, when it is not practical to mark the face page of an award document, alternative means may be used to identify a contract as an award under the Small Business Competitiveness Demonstration Program.

DoD published a proposed rule at 69 FR 35566 on June 25, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule only changes an administrative requirement to accommodate the use of automated contracting systems.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 219 is amended as follows:

■ 1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

■ 2. Section 219.1007 is amended by adding paragraph (a)(2) to read as follows:

219.1007 Procedures.

(a)(2) When it is not practical to mark the face page of an award document, alternative means may be used to identify the contract as an award under the Small Business Competitiveness Demonstration Program.

* * * * *

[FR Doc. 05–2172 Filed 2–4–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2004–D002]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber—Restriction to Domestic Sources

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the ending date for phasing out domestic source restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber. The ending date is extended from May 31, 2005, to May 31, 2006.

EFFECTIVE DATE: February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D002.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule extends the ending date for phasing out domestic source restrictions on the acquisition of PAN carbon fiber from May 31, 2005, to May 31, 2006. The prescription for use of the clause at DFARS 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, is amended to require inclusion of the clause in solicitations and contracts for major systems issued on or before May 31, 2006, if the system is not yet in development and demonstration.

The aerospace industry requested the extension to provide U.S. companies sufficient time to maintain the industrial and technological capability to support a critical material used in advanced aerospace weapons programs. In addition, the extension is consistent with Section 832 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), which requires a delay in phase-out of the restriction until DoD performs an assessment of the PAN carbon fiber industry and submits the resulting report to Congress.

DoD published a proposed rule at 69 FR 35567 on June 25, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because there are no known domestic small business manufacturers of PAN carbon fiber.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 225 is amended as follows:

■ 1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7103–1 is amended by revising the second sentence to read as follows:

225.7103–1 Policy.

* * * DoD is phasing out the restrictions over the period ending May 31, 2006. * * *

■ 3. Section 225.7103–3 is revised to read as follows:

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems issued on or before May 31, 2006, if the system is not yet in engineering and manufacturing

development (milestone B as defined in DoDI 5000.2).

[FR Doc. 05–2171 Filed 2–4–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 229

[DFARS Case 2003–D031]

Defense Federal Acquisition Regulation Supplement; Tax Procedures for Overseas Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to tax relief for acquisitions conducted in certain foreign countries. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATES: February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D031.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This final rule is a result of the DFARS Transformation initiative. The rule revises DFARS Subpart 229.70 to remove procedures that DoD contracting officers use in obtaining tax relief and duty-free import privileges for acquisitions conducted in Spain and the United Kingdom. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

DoD published a proposed rule at 69 FR 46129 on August 2, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule relocates DoD procedural information related to tax relief, with no substantive change in policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 229

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 229 is amended as follows:

■ 1. The authority citation for 48 CFR Part 229 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 229—TAXES

■ 2. Subpart 229.70 is revised to read as follows:

Subpart 229.70—Special Procedures for Overseas Contracts

To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.

[FR Doc. 05–2169 Filed 2–4–05; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 70, No. 24
Monday, February 7, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19667; Airspace Docket No. 04–ASO–13]

RIN 2120–AA66

Proposed Establishment of Area Navigation Routes (RNAV), FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish eight area navigation (RNAV) routes in Florida in support of the High Altitude Redesign (HAR) project. The FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace.

DATES: Comments must be received on or before March 24, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–19667 and Airspace Docket No. 04–ASO–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–19667 and Airspace Docket No. 04–ASO–13) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2004–19667 and Airspace Docket No. 04–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1701 Columbia Avenue College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As part of the on-going National Airspace Redesign, the FAA has implemented the HAR program. This specific effort focuses on developing and implementing improvements in navigation structure and operating methods to allow more flexible and efficient en route operations in the high altitude airspace environment. In support of this program, the FAA is establishing RNAV routes to provide greater freedom to properly equipped users and to achieve the economic benefits of flying user selected non-restrictive routings.

The new RNAV routes will be identified by the letter prefix ''Q,'' followed by a number consisting of from one to three digits. The International Civil Aviation Organization (ICAO) has allocated the ''Q'' prefix, along with the number set 1 through 499, for use by the U.S. for designating domestic RNAV routes.

Related Rulemaking

On April 8, 2003, the FAA published the Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes, and Reporting Points rule in the **Federal Register** (68 FR 16943). This rule adopted certain amendments proposed in Notice No. 02–20, Area Navigation and Miscellaneous Amendments. The rule revised and adopted several definitions in FAA regulations, including Air Traffic Service Routes, to be in concert with ICAO definitions; and reorganized the structure of FAA regulations concerning the designation of Class A, B, C, D, and E airspace areas, airways, routes, and reporting points. The purpose of the rule was to facilitate the establishment of RNAV routes in the National Airspace System (NAS) for use by aircraft with advanced navigation system capabilities.

On May 9, 2003, the FAA published the Establishment of RNAV final rule in the **Federal Register** (68 FR 24864). This rule, which supports Phase I of the

HAR, established 11 new RNAV routes along high-density air traffic tracks in the western and north central U.S. The eight new RNAV routes being proposed in this notice would further support the HAR effort by extending the benefits of RNAV routing to the Florida area.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to establish eight RNAV routes in Florida within the airspace assigned to the Jacksonville Air Route Traffic Control Center (ARTCC). These routes are proposed as part of the HAR program to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations within the Jacksonville ARTCC area of responsibility.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 2006—Area Navigation Routes

* * * * *

Q–104 DEFUN to CYY [New]

DEFUN	WP	(Lat. 30°48′51″ N., long. 86°07′53″ W.)
HEVVN	WP	(Lat. 29°49′19″ N., long. 83°53′43″ W.)
PLYER	WP	(Lat. 28°56′51″ N., long. 83°20′09″ W.)
MARVE	WP	(Lat. 28°35′16″ N., long. 83°06′31″ W.)
CYY	VOR/DME	(Lat. 26°09′12″ N., long. 81°46′41″ W.)

Q–106 SMELZ to GADAY [New]

SMELZ	WP	(Lat. 28°04′59″ N., long. 82°06′34″ W.)
BULZI	WP	(Lat. 29°59′14″ N., long. 83°44′17″ W.)
GADAY	WP	(Lat. 31°02′28″ N., long. 86°08′02″ W.)

Q–108 GADAY to CLAWZ [New]

GADAY	WP	(Lat. 31°02′28″ N., long. 86°08′02″ W.)
CLAWZ	WP	(Lat. 30°38′29″ N., long. 83°02′19″ W.)

Q–110 KPASA to FEONA [New]

KPASA	WP	(Lat. 28°10′34″ N., long. 81°54′27″ W.)
BRUTS	WP	(Lat. 29°30′58″ N., long. 82°58′57″ W.)
GULFR	WP	(Lat. 30°12′23″ N., long. 83°33′08″ W.)
FEONA	WP	(Lat. 31°36′11″ N., long. 84°43′51″ W.)

Q–112 DEFUN to INPIN [New]

DEFUN	WP	(Lat. 30°48′51″ N., long. 86°07′53″ W.)
HEVVN	WP	(Lat. 29°49′19″ N., long. 83°53′43″ W.)
INPIN	WP	(Lat. 28°33′13″ N., long. 81°48′27″ W.)

Q–114 DEFUN to FORTL [New]

DEFUN	WP	(Lat. 30°48′51″ N., long. 86°07′53″ W.)
HEVVN	WP	(Lat. 29°49′19″ N., long. 83°53′43″ W.)
TEPEE	WP	(Lat. 28°00′01″ N., long. 82°21′59″ W.)
JOCKS	WP	(Lat. 27°00′33″ N., long. 81°51′13″ W.)
FORTL	WP	(Lat. 26°18′34″ N., long. 81°21′08″ W.)

Q–116 KPASA to CEEYA [New]

KPASA	WP	(Lat. 28°10′34″ N., long. 81°54′27″ W.)
BRUTS	WP	(Lat. 29°30′58″ N., long. 82°58′57″ W.)
GULFR	WP	(Lat. 30°12′23″ N., long. 83°33′08″ W.)
CEEYA	WP	(Lat. 31°31′32″ N., long. 84°05′32″ W.)

Q–118 KPASA to LENIE [New]

KPASA	WP	(Lat. 28°10′34″ N., long. 81°54′27″ W.)
BRUTS	WP	(Lat. 29°30′58″ N., long. 82°58′57″ W.)
LENIE	WP	(Lat. 31°33′58″ N., long. 83°50′50″ W.)

* * * * *

Issued in Washington, DC, on January 31, 2005.

Edie Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–2221 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19581; Airspace Docket No. 04–ACE–71]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects a notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, January 19, 2005, (70 FR 2991) [FR Doc. 05–969]. It corrects an error in the legal description of the proposed Class E airspace area designated as a surface area at Ankeny, IA.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–969, published on Wednesday, January 19, 2005, (70 FR 2991) proposed to establish a Class E airspace area designated as a surface area and to modify the existing Class E airspace area extending upward from 700 feet above the surface at Ankeny, IA. The proposed airspace and changes were to protect aircraft departing from and executing instrument approach procedures to Ankeny Regional Airport. However, the dimensions of the extension to the proposed Class E airspace area designated as a surface area were incorrect.

Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area designated as a surface area at Ankeny, IA, as published in the **Federal Register** on Wednesday, January 19, 2005, (70 FR 2991) [FR Doc. 05–969] is corrected as follows:

§ 71.1 [Corrected]

On page 2992, Column 1, fifth paragraph, fourth line from the bottom, change ''extending from the 7-mile radius'' to read ''extending from the 4.6-mile radius''.

Issued in Kansas City, MO, on January 20, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–2227 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20029; Airspace Docket No. 04–AAL–25]

Proposed Establishment of Class E Airspace; Perryville, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Perryville, AK. A new Standard Instrument Approach Procedure (SIAP) and Departure Procedure are being published for the Perryville Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approach at Perryville, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Perryville, AK.

DATES: Comments must be received on or before March 24, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20029/ Airspace Docket No. 04–AAL–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20029/Airspace Docket No. 04–AAL–25.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web

page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at Perryville, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Perryville, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP and Departure Procedure for the Perryville Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 3, original. The CILAC ONE RNAV Departure will also be established. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Perryville Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Perryville Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing instrument approaches at Perryville Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Perryville, AK [New]

Perryville Airport, AK

(Lat. 55°54′03″ N., long. 159°09′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Perryville Airport, and that airspace extending upward from 1,200 feet above the surface within a 10-mile radius of the Perryville Airport.

* * * * *

Issued in Anchorage, AK, on January 26, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–2226 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20031; Airspace Docket No. 05–AAL–02]

Proposed Revision of Class E Airspace; Kalskag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Kalskag, AK. Two new Standard instrument approach procedures (SIAP's) and a new Textual Departure Procedure are being published for Kalskag, AK. Additional Class E airspace is needed to contain aircraft executing instrument approaches at Kalskag Airport. Adoption of this proposal would result in additional Class E airspace upward from 700 feet (ft.) above the surface at Kalskag, AK.

DATES: Comments must be received on or before March 24, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20031/ Airspace Docket No. 05–AAL–02, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the

public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20031/Airspace Docket No. 05–AAL–02.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), by adding Class E airspace at Kalskag, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Kalskag, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAP's for the Kalskag Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 6, original; and (2) RNAV (GPS)–A, original. A new Textual Departure Procedure has also been developed. Revised Class E controlled airspace extending upward from 700 ft above the surface within the 12.1-mile radius of the Kalskag Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Kalskag Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because in proposes to revise Class E airspace sufficient to contain aircraft executing instrument approaches at Kalskag Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kalskag, AK [Revised]

Kalskag Airport, AK
(Lt. 61°32′11″ N., long. 160°20′29″ W.)

That airspace extending upward from 700 feet above the surface within a 12.1-mile radius of the Kalskag Airport, excluding that airspace within the Aniak, AK Class E area.

* * * * *

Issued in Anchorage, AK, on January 26, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–2224 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20030; Airspace Docket No. 05–AAL–01]

Proposed Revision of Class E Airspace; St. Michael, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at St. Michael, AK. Two new Standard instrument approach procedures (SIAPs) and a new Textual Departure Procedure are being published for St. Michael, AK. Additional Class E airspace is needed to contain aircraft executing instrument approaches at St. Michael Airport. Adoption of this proposal would result in additional Class E airspace upward from 700 feet (ft.) above the surface at St. Michael, AK.

DATES: Comments must be received on or before March 24, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20030/Airspace Docket No. 05–AAL–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20030/Airspace Docket No. 05–AAL–01.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), by adding Class E airspace at St. Michael, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at St. Michael, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the St. Michael Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 2, original; and (2) RNAV (GPS) RWY 20, original. A new Textual Departure Procedure has also been developed. Revised Class E controlled airspace extending upward from 700 ft above the surface within the 8.4-mile radius of the St. Michael Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the St. Michael Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200-foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30,

2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace sufficient to contain aircraft executing instrument approaches at St. Michael Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 St. Michael, AK [Revised]

St. Michael Airport, AK
(Lat. 63°29′24″ N., long. 162°06′37″ W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the St. Michael Airport.

* * * * *

Issued in Anchorage, AK, on January 26, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–2223 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 375

[Docket No. OST–2003–15511]

RIN 2105–AD39

Certain Business Aviation Activities Using U.S.-Registered Foreign Civil Aircraft

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under Part 375 of the Department's regulations, 14 CFR part 375, which provides for the operation in the United States of ''foreign civil aircraft'' which are not engaged in common carriage, persons or entities seeking to operate foreign civil aircraft within the United States involving the carriage of persons, property and mail ''for remuneration or hire'' must obtain a ''foreign aircraft permit'' from the Department of Transportation under that Part. On May 16, 2003, the National Business Aircraft Association (NBAA), a trade association that represents many business aircraft operators throughout the United States, wrote to the Department requesting a policy determination that certain types of operations that its representative companies might perform using U.S.-registered foreign civil aircraft (such as carriage of a company's own officials and guests, or aircraft time-sharing, interchange or joint ownership arrangements between companies) do not, in fact, constitute operations ''for remuneration or hire'' within the meaning of Part 375. The NBAA noted that a favorable response would eliminate the need for the companies involved to secure a permit for such operations. The Department of Transportation is now proposing to amend 14 CFR part 375 to clarify those circumstances under which companies operating U.S.-registered foreign civil aircraft are not deemed to be involved in air commerce for remuneration or hire and, therefore, are not required under Part 375 to obtain a foreign aircraft permit.

On July 7, 2003, the Department solicited comments on the NBAA request (see 68 FR 40321 (July 7, 2003)). Pursuant to the Department's request, comments were filed by interested parties. The Department has reviewed the comments filed in Docket OST–2003–15511 and now proposes to amend Part 375 of our regulations as described below.

DATES: Comments on the proposal must be received by April 8, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–2003–15511 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the

Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Modesitt, Chief, Europe Division, Office of International Aviation (X–40), U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–2384.

SUPPLEMENTARY INFORMATION: The issue here is whether, and under what circumstances, companies operating U.S.-registered foreign civil aircraft are engaged in commercial air operations for remuneration or hire to, from, and within the United States. Part 375 defines ''foreign civil aircraft'' as ''(a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States.'' 49 U.S.C. 40102(a)(15) defines ''citizen of the United States'' as, among other things, ''a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.'' Thus, if a company that does not meet the definition of a citizen of the United States (for example, if its president is not a U.S. citizen) owns, directly or through a parent or subsidiary, a corporate aircraft, that aircraft is considered to be a ''foreign civil aircraft'' under Part 375, even if it is U.S.-registered.

The Department has addressed this issue in limited fashion in past interpretations of Part 375 as it pertains to demonstration flights performed on a chargeback basis related to the sale of aircraft and chargeback operations conducted by a parent for its wholly-owned subsidiary under circumstances where the management and/or board of directors and management of the corporation were not entirely composed of U.S. citizens. In both instances the Department indicated that such operations, within the confines of the record of those interpretations, did not constitute operations for remuneration or hire, and, therefore, a foreign aircraft permit would not be required under Part 375 of the Department's regulations.

Summary of Comments Filed

Pursuant to the Department's request for comments on NBAA's proposal, the Department received comments from several parties.

Comments in Support of NBAA's Request

Comments in support of NBAA's request were filed by NBAA, Dassault Falcon Jet Corporation, Carnival Cruise Lines, and Ford Motor Company. In its comments, NBAA strongly supports a policy determination that makes it clear that the business operations at issue here are non-commercial in nature, and are not subject to the prior approval requirements of Part 375. NBAA maintains that application of the Part 375 prior approval requirements to such operations does not make practical sense and serves only as an impediment to efficient business aviation operations. NBAA further states that business aircraft operations are non-commercial in nature because they: are not for remuneration or hire; are conducted entirely incidental to the principal business of the company; are not a business per se; and, contain no elements of holding out to the general public. Such services, NBAA says, are without compensation in most cases other than limited and defined reimbursement of expenses. Finally, NBAA maintains that application of Part 375's prior approval requirements to these operations, particularly if due to the involvement of one or more non-U.S. citizens, would restrict the free flow of business aviation, and that doing so sets a bad precedent for other countries' assessment of whether to restrict U.S. general aviation operations for business-related purposes.

Dassault Falcon Jet Corp., a major manufacturer of business aircraft, filed comments that strongly supported the NBAA position and asked the Department to extend the current interpretation of Part 375 beyond aircraft demonstration flights and parent/wholly-owned subsidiary situations to include other related business activities, such as aircraft time-sharing, aircraft interchanges, joint ownership of aircraft by multiple business, and the full scope of intra-corporate family operations. Dassault notes that most businesses operating aircraft carry employees, customers, and other persons with whom they conduct business. These activities, Dassault maintains, are incidental to, and in support of, a company's primary businesses, as opposed to being a business in and of itself. Dassault notes that a broader interpretation by the Department of Part 375 similar to that requested by NBAA will result in conformity with the manner in which the Federal Aviation Administration treats these activities under 14 CFR Part 91 for the purposes of aircraft certification.

Carnival Corporation, a/k/a Carnival Cruise Lines, also filed comments that supported DOT issuance of the policy determination requested by NBAA. Carnival sees no useful purpose for the Department to consider the activities at issue to be commercial in nature when they are conducted entirely for the benefit of business-related participants, with no elements of holding out for sale, and without compensation other than limited and defined reimbursement of expenses. Nor does Carnival believe that such operations should be restricted because one of the participants in not a U.S. citizen, as doing so would restrict the free flow of business aviation due to the burden of regulatory approvals. Carnival also noted that the NBAA request would more closely align the way the Department treats such business activities with the FAA's regulations.

Comments Opposing NBAA's Request

In filed comments, the Air Transport Association of America, Inc., (ATA) asked the Department to deny NBAA's request. ATA stated that because the NBAA's request raises cabotage and bilateral international aviation issues, it seeks relief than cannot be considered properly and granted through a regulatory interpretation. ATA stated that it does not object to a previous Departmental interpretation of Part 375 saying that authority is not required for certain operations by a parent company on behalf of a wholly-owned subsidiary and vice versa. ATA's concern, however, is about a broadening of that interpretation to involve non-related companies with unrestricted involvement of non-U.S. citizens. ATA expressed concern that granting the relief sought by NBAA would generate incentives for foreign companies to pool U.S.-registered aircraft in order to get additional compensation and, therefore, a better return on their aircraft investment that would otherwise not be

available, and that the bigger the pool of such participants the greater the risk that such arrangements would involve true commercial operations. ATA also stated that the NBAA proposal would allow such foreign entities to circumvent their home countries' restrictive bilateral agreements with the United States, thereby allowing foreign entities to avoid longstanding U.S. statutory prohibitions against cabotage. ATA expressed concern that under the NBAA proposal there would be no assurance of reciprocity by foreign governments in their treatment of similar operations of U.S. citizens operating in foreign countries. Finally, with respect to time share operations, ATA maintains one element of the cost recovery allowance, namely the ability to charge in addition to other specifically allowed incremental cost recoveries, a 100% fee of fuel, oil and lubrication expenses, provides a return above marginal operating costs and therefore would allow a profit for time share operations on a marginal cost basis.

NBAA Reply

On August 27, 2003, NBAA requested leave to submit a reply to the comments of ATA. In the interest of a complete record, we accepted NBAA's reply comments, as well as the surreply comments of ATA and NBAA discussed below. In its reply, NBAA stated that ATA's concerns are unfounded. NBAA believed that ATA misunderstands crucial concepts that distinguish corporate aviation from common carriage. NBAA cited as distinctions the requirement that the transportation be merely incidental to the corporate operator's principal business, that the corporate operator engage in no holding out or other indicia of common carriage, and that any payments made to corporate operators do not exceed costs. These distinctions, NBAA maintained, assure that the worst-case scenario envisioned by ATA—that foreign corporations would join together to secure economic benefits under the NBAA proposal—would not happen, just as it has not happened with respect to U.S. corporations during the more than thirty years they have operated under comparable FAA provisions. NBAA stated further that its proposal is not contrary to the U.S. statutory prohibition against cabotage, and does not diminish Departmental oversight responsibility of foreign commercial air service. Concerning ATA concerns that time share operators cost recovery allowances could potentially involve a profit for the aircraft operator, NBAA states that the allowable cost recovery consistently falls short of a fully-allocated cost recovery, much less a profit.

ATA Surreply

On October 2, 2003, ATA filed a motion for leave to file a surreply. ATA stated that the issues of cabotage and international reciprocity that are implicated here are irrefutable. ATA also stated that the distinction drawn by the NBAA between corporate aircraft operations and commercial operations or common carriage is a moot point, as the issue is whether companies can operate in air commerce without being common carriers. ATA stated that the question of whether corporate aircraft operations are incidental to a business is of no consequence, because the services involved are performed by a third party and the third party would be receiving compensation.

NBAA Surreply

On October 3, 2003, NBAA filed a motion for leave to file a surreply. NBAA stated that the issue of whether general aviation operations of corporate aircraft operators are conducted for commercial benefit has been addressed numerous times, and that ATA is mistaken in its belief that aircraft time-sharing, joint ownership, and interchange operations constitute operations for compensation or hire.

Discussion

It is our tentative view that NBAA has made a persuasive case for the changes to Part 375 that it seeks, and we are proposing to amend our regulations to effect those changes.

As NBAA notes, pursuant to 14 CFR 91.501 of the FAA's regulations, U.S. citizen operators of U.S.-registered aircraft now perform, without prior Department approval, the kinds of intracorporate, interchange, joint ownership, and time-sharing operations that are the subject of this proceeding. Such operations are more problematic for companies operating U.S.-registered foreign civil aircraft under the current Part 375, which defines ''commercial air operations'' (requiring specific Department approval) as ''any operations for remuneration or hire to, from, or within the United States * * *,'' and which makes no distinction for the kinds of business-oriented transportation provided for under the FAA's regulations.

As the U.S. economy has become more global and companies more multinational in character, more and more businesses find it difficult or impossible to operate separate corporate flight departments or conduct the range of services that they could provide if their aircraft were not considered to be ''foreign civil aircraft'' under Part 375. This situation, in our view, significantly hampers the companies' flexibility, and puts them at a competitive disadvantage compared with companies that qualify as U.S. citizens.

We believe, in the context of the limited business-related activities raised by NBAA, that public interest considerations warrant treating U.S. and foreign-citizen companies operating U.S. registered aircraft the same way. Specifically, we believe that reimbursement should not be considered remuneration or hire within the context of Part 375 where a company operating a U.S.-registered foreign civil aircraft engages in the kinds of business air service transactions as defined below, and is reimbursed for its expenses as set forth in our proposed amendments. As such, the operations would be authorized by regulation and would no longer require prior approval in the form of a foreign aircraft permit under Part 375. Our decision to level the playing field in this instance by placing U.S. and foreign-citizen companies on the same footing has the added practical advantage of treating U.S.-registered foreign civil aircraft in our regulations similarly to U.S.-registered civil aircraft in FAA regulations.[1]

We propose to implement the proposed changes by adding a new section to subpart D, of part 375. That new section, ''Certain business aviation activities using U.S.-registered foreign civil aircraft'', would authorize those operations that NBAA requested to be covered. We are also proposing a minor technical amendment to the existing language in § 375.1 to reflect the recodification of Title 49 of the U.S. Code, changing the current reference of ''section 402 of the Federal Aviation Act of 1958, as amended'' to ''49 U.S.C. 41301.'' We are also updating the authority citation for Part 375 to reflect recodification of Title 49.

In making this proposal, we are mindful of the concerns raised by the parties filing pleadings in opposition to NBAA's proposal. We believe, however, that the public benefits to be gained from this regulation would outweigh those concerns. We concur with ATA's view that the relief NBAA seeks cannot be accomplished merely through interpretation of existing rules, and it is

[1] We wish to make clear, however, that nothing in our proposed change to Part 375 would in any way serve to alter any orders, regulations, or requirements, or interpretations thereof, of the Federal Aviation Administration.

for this reason that we are inviting public comment through this NPRM.

We do not believe that the very limited changes we are proposing here will result in a circumvention of bilateral aviation agreements, or raise any cabotage concerns. With respect to bilateral issues, we see the changes we are proposing as having the potential to assist U.S. corporate operators abroad, as it will indicate U.S. willingness to accord reciprocity for these sorts of business-related transportation arrangements. Still, if problems should occur, and reciprocity should be denied to U.S. operators, we have ample tools to seek resolution of such access problems.

Moreover, we do not see that the changes we are proposing raise any cabotage issues. As noted, our proposed changes merely find that certain limited reimbursements made in connection with corporate-related travel do not constitute remuneration within the context of Part 375, and put all operators of U.S-registered aircraft on the same economic regulatory footing. It should be noted that we made a similar change to Part 375 in 1986 with respect to expense-related reimbursements for demonstration flights by foreign civil aircraft, finding that those reimbursements did not constitute remuneration.[2] In our view, neither forms of business-related reimbursement raise any problems with the statutory provisions of 49 U.S.C. 41703.

With respect to concerns raised about operators pooling aircraft and arranging their operations so as to become common carriers without requisite Department authority, we must emphasize that such operations are not permissible today, nor have they been under longstanding rules (FAA's Part 91). Also, in detailing in this rulemaking under Part 375 those expense elements that can be considered for purposes of reimbursement, we are specifically excluding profit, which should additionally serve to meet the concerns raised by ATA. In any event, we are in a position to monitor such activities. If any operations develop that would constitute, in our view, common carrier operations by one of the companies operating under the amended rule we are proposing, we have adequate enforcement powers to assure that the operator involved complies with all relevant statutory and regulatory requirements.

[2] *See* 51 FR 7251 (Mar. 3, 1986).

Regulatory Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the Department will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be issued at any time after close of the comment period.

Executive Order 12866 and DOT Regulatory Policies and Provisions

This rule is a significant regulation under Executive Order 12866 and DOT Regulatory Policies and Provisions because of industry interest.

The economic impact of the implementation of the proposed rule is not considered to be significant. The rule would save certain U.S. companies the legal expenses and data-preparation expenses of submitting and processing requests for DOT authority to conduct specified types of intracorporate flight operations. In turn, the Department would save staff expense by not having to process additional foreign air carrier permit applications.

Until recently, management in American companies was far more substantially composed of American citizens, and therefore U.S. companies operating non-commercial general aviation aircraft for parent or subsidiary companies on a cost-reimbursement basis did not experience difficulty in satisfying Departmental rules on citizenship. (Although the citizenship rules were intended to apply primarily to commercial operators, they also apply to many general aviation operations of U.S. companies.) With economic globalization, more non-U.S. citizens have become members of management in U.S. companies, and in a number of instances those companies now fail to qualify under Departmental citizenship rules for the reimbursable operation of general aircraft. They accordingly must seek Department approval to perform such operations. The proposed rule would remove the regulatory burden these companies now face of having to obtain Department approval for flight operations involving intracorporate reimbursement of expenses. Further, the rule provides a rational methodology for such reimbursement. This is consistent with sound accounting practices, as well as recent actions in industry and governmental policy seeking improved corporate accounting practices.

Federalism

The Department has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The Department anticipates that any action taken will not preempt a State law or State regulation or affect the States' ability to discharge traditional State government functions. We encourage commenters to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires an agency to review regulations to assess their impact on small businesses. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would almost exclusively affect only large corporations. In addition, we anticipate the rule would have little, if any, economic impact.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rule contains information collection requirements. As required by the Paperwork Reduction Act, the Department will submit this requirement to the Office of Information and Regulatory Affairs of the OMB for review, and reinstatement, with change of a previously approved collection for which approval has expired.

OST Form 4509 is a required application for foreign aircraft permit or special authorization. The Department requires operators of foreign civil aircraft to obtain the permits before conducting certain flight operations within U.S. airspace. In granting such permits, the Department determines that the proposed operation is consistent with the applicable law, that the applicant's homeland grants a similar privilege to U.S. registered aircraft, and that the proposed operation is in the

interest of the public of the United States.

OMB Number: 2106–0007.

Title: 14 CFR part 375 Navigation of Foreign Civil Aircraft Within the United States.

Burden Hours: 13.

Affected Public: Business or other for-profit.

Description of Paperwork: The proposed changes to the rulemaking are intended to save certain U.S. companies the legal expenses and data preparation expenses of submitting and processing requests for DOT authority to conduct special types of intracorporate flight operations. The Department would also save staff expenses by not having to process additional permit applications.

Unfunded Mandates Reform Act

This rule, if adopted as proposed, would not impose an unfunded mandate for the purposes of the Unfunded Mandates Reform Act of 1995.

Regulation Identifier (RIN)

A regulation identifier (RIN) is assigned to each regulatory action listed in the United Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 375

Aircraft, Airmen, Foreign relations, Reporting and recordkeeping requirements.

PART 375–NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 375 as follows:

1. The authority citation for 14 CFR Part 375 would be amended by revising the citation to read as follows:

Authority: 49 U.S.C. 40102, 40103, and 41703.

2. The definition of ''Commercial air operations'' in § 375.1 would be revised to read as follows:

§ 375.1 Definitions.

* * * * *

Commercial air operations shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under 49 U.S.C. 41301, exemptions, and all other operations in air transportation.

* * * * *

3. A new section, § 375.37, would be added to read as follows:

§ 375.37 Certain business aviation activities using U.S.-registered foreign civil aircraft.

For purposes of this section, ''company'' is defined as one that operates civil aircraft in furtherance of a business other than air transportation. U.S.-registered foreign civil aircraft that are not otherwise engaged in commercial air operations, or foreign air transportation, and which are operated by a company in the furtherance of a business other than transportation by air, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air), may be operated to, from, and within the United States as follows:

(a) *Intracorporate operations:* A company operating a U.S.-registered foreign civil aircraft may conduct operations for a corporate subsidiary or parent on a fully-allocated cost reimbursable basis; provided, that the operator of the U.S.-registered foreign civil aircraft must hold majority ownership, or be majority owned by, the relevant subsidiary or parent company;

(b) *Interchange operations:* A company may lease a U.S.-registered foreign civil aircraft to another company, in exchange for equal time, when needed on the other company's U.S. registered aircraft, where no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two aircraft;

(c) *Joint ownership operations:* A company that jointly owns a U.S.-registered foreign civil aircraft and furnishes the flight crew for that aircraft may collect from the other joint owners of that aircraft a share of the actual costs involved in the operation of the aircraft; and

(d) *Time-sharing operations:* A company may lease a U.S.-registered foreign civil aircraft, with crew, to another company; provided, that the operator may collect no charge for the operation of the aircraft except reimbursement for:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hanger and tie-down costs away from the aircraft's base of operations.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses for fuel, oil, lubricants, and other additives.

Issued under authority delegated in 49 CFR 1.56a this 28th day of January, 2005, in Washington, DC.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–2035 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–62–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB47

NARA Facility Locations and Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to add to its regulations the location of the William J. Clinton Presidential Library in Little Rock, Arkansas, and the location and hours for the regional archives in NARA's Southeast Region (Atlanta) in Morrow, Georgia. This proposed rule will affect the public.

DATES: Submit comments on or before April 8, 2005.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: 3095–AB47'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• E-Mail: Send comments to *comments@nara.gov.* If you do not receive a confirmation that we have received your e-mail message, contact Jennifer Davis Heaps at 301–837–1850.

• Fax: Submit comments by facsimile transmission to 301–837–0319.

• Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

• Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1801.

SUPPLEMENTARY INFORMATION: The William J. Clinton Presidential Library opened to the public on November 19, 2004. Accordingly, NARA updates the list of Presidential libraries to include contact information for the new library. As for other Presidential libraries NARA operates, listed at 36 CFR part 1253, the hours for the Clinton Library are 9 a.m. to 5 p.m., Monday through Friday.

In addition, the regional archives in NARA's Southeast Region (Atlanta) is moving from East Point, Georgia, and will open at its new location adjacent to the Georgia Archives in Morrow, Georgia. The regional archives' microfilm reading room is scheduled to open to the public on March 1, 2005, and the textual research room and the rest of the facility on April 1, 2005. The hours for the regional archives in NARA's Southeast Region (Atlanta) are designated Tuesday through Saturday to conform to the hours of the Georgia Archives.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1253 of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATIONS OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Amend § 1253.3 by adding paragraph (k) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(k) William J. Clinton Library is located at 1200 President Clinton Avenue, Little Rock, AR 72201. The phone number is 501–374–4242 and the fax number is 501–244–2883. The e-mail address is *clinton.library@nara.gov.*

3. Amend § 1253.7 by revising paragraph (e) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(e) NARA—Southeast Region (Atlanta) is located at 5780 Jonesboro Road, Morrow, GA 30260. The hours are 8:30 a.m. to 5 p.m., Tuesday through Saturday. The telephone number is 404–968–2500.

* * * * *

Dated: February 2, 2005.

John W. Carlin,

Archivist of the United States.

[FR Doc. 05–2256 Filed 2–4–05; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0003; A–1–FRL–7863–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from portable fuel containers. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 9, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0003 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2004–ME–0003,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will

not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 12, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–2061 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0194; FRL–7869–6]

RIN 2060–AL89

National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On February 27, 2002, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations, which were issued under section 112 of the Clean Air Act (CAA). This action would amend the standards to clarify the frequency for categorizing leather product process types, modify the definition of ''specialty leather,'' add a definition for ''vacuum mulling,'' and add an alternative procedure for determining the actual monthly solvent loss from an affected source.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the direct final rule. If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of today's **Federal Register** is withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final rule based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received on or before February 17, 2005 unless a hearing is requested by February 14, 2005. If a hearing is requested, written comments must be received on or before February 22, 2005.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, a public hearing will be held on February 17, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0194, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *air-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0194. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. William Schrock, Organic Chemicals Group, Emission Standards Division (C504–04), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; facsimile number (919) 541–3470;

electronic mail (email) address: *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	3161	Leather finishing operations.
	31611	Leather finishing operations.
	316110	Leather finishing operations.
Federal government	.....	Not affected
State/local/tribal government	.....	Not affected.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.5285 of the national emission standards. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What should I consider as I prepare my comments for EPA? Submitting CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5032, electronic mail address *schrock.bill@epa.gov.,* at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. William Schrock to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Direct Final Rule. A direct final rule identical to the proposal is published in the Rules and Regulations section of today's **Federal Register**. If we receive any adverse comment pertaining to the amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's technical amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify

that this action will not have a significant impact on a substantial number of small entities. The rule amendments will not impose any new requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–2304 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 04–289]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, we modify our rules to improve the effectiveness of the rural health care universal service support mechanism. In the *Further Notice of Proposed Rulemaking* (*FNPRM*), we seek comment on whether we should increase the percentage discount that rural health care providers receive for Internet access and whether infrastructure development should be funded. Additionally, we seek comment on whether to modify our rules specifically to allow mobile rural health care providers to use services other than satellite.

DATES: Comments are due on or before April 8, 2005. Reply comments are due on or before May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Regina Brown at (202) 418–0792 or Dana Bradford at (202) 418–1932, Wireline Competition Bureau, Telecommunications Access Policy Division, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, in WC Docket No. 02–60 released on December 17, 2004. A companion *Report and Order* and *Order on Reconsideration* was also released on December 17, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Further Notice of Proposed Rulemaking

A. Internet Access

1. In the 2003 *Report and Order*, 68 FR 74492, December 24, 2003, the Commission concluded that support equal to 25 percent of the monthly cost for any form of Internet access reasonably related to the health care needs of the facility should be provided to rural health care providers. The Commission specifically noted that it was acting conservatively by choosing a 25 percent flat discount initially. Because requests for Internet access discounts have remained at low levels, to seek comment on whether a 25 percent flat discount off the cost of monthly Internet access for eligible rural health care providers is sufficient. We continue to believe that a flat discount will lead to greater predictability and fairness among health care providers. We encourage commenters to be specific as to the level of support that we should offer, and to provide us with the facts that they rely upon in advocating a level of support.

2. Further, to accurately gauge the demand for support under the rural health care mechanism, we seek comment on the effect that an increase in Internet access support would have on the demand for support from rural health care providers. We therefore seek comment from rural health care providers on the demand for Internet access, and from service providers on the cost of such services. We seek comment on whether demand for Internet access is likely to reach the $400 million cap on the amount of support to be provided by the rural health care mechanism, and how increased demand would affect the operation of the rural health care mechanism.

3. We also seek comment on the positive or negative effects that a decision to increase Internet access support will have on the rural health care support mechanism, from the perspective of the health care providers, the service providers, and USAC. We encourage parties to discuss any issues relevant to whether we should provide increased support for Internet access, what level of support to provide, what restrictions, if any, we should place on such support, what administrative problems and concerns may arise if we provide increased support, and the impact of an increase in support on the mechanism's ability to support other services. Specifically, we seek comment on whether an increase of support would have positive or negative effects on facilities-based broadband deployment in rural areas.

B. Support for Other Telecommunications Services for Mobile Rural Health Care Providers

4. In the companion Report and Order, we revise our policy to allow mobile rural health care clinics to receive discounts for satellite services calculated by comparing the actual cost of the satellite service to the rate for an urban wireline service with a similar bandwidth. We recognize that not only satellite services but other telecommunications platforms, such as terrestrial wireless, may provide the most cost-effective means of providing the telemedicine link. Because we want to encourage mobile health care providers to consider all available telecommunications services when determining which service best suits the needs of the telemedicine project, we seek comment on whether to modify our rules specifically to allow mobile rural health care providers to use services other than satellite. We seek comment on what other telecommunications services might be available to support mobile rural telemedicine projects. We ask commenters to address how such service may be a more cost-effective method of providing service than a satellite connection. We also request whether services other than satellite services would require different rules, different eligibility criteria or any other changes from the rules we establish today.

C. Support for Infrastructure Development

5. In the *1997 Universal Service Order*, 62 FR 32862, June 17, 1997, the Commission requested comment on whether and how to support infrastructure development or ''network buildout'' needed to enhance public and not-for-profit health care providers' access to advanced telecommunications and information services. At the time, the Commission noted that the record contained anecdotal evidence regarding the need for support for infrastructure development. We now seek to refresh the record on this issue.

6. In the *1997 Universal Service Order*, the Commission agreed with MCI that infrastructure development is not a ''telecommunications service'' within the scope of section 254(h)(1)(A) and concluded that the Commission has the discretionary authority to establish rules to implement a program of universal

service support for infrastructure development as a method to enhance access to advanced telecommunications and information services under section 254(h)(2)(A), as long as such a program is competitively neutral, technically feasible, and economically reasonable. Section 254(h)(2)(A) directs the Commission to establish competitively neutral rules ''to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all * * * health care providers.'' Extending or upgrading existing telecommunications infrastructure could enhance access to the advanced services that may be offered over that infrastructure. Alternatively, in the schools and libraries context, the Commission has recognized that some carrier infrastructure costs may be passed on as a component of monthly service charges.

7. Should the Commission authorize support for upgrades to the public switched or backbone networks? How would the program be structured so that it is competitively neutral, technically feasible and economically reasonable? If so, how should the Commission limit such support so that funds are only provided when such upgrades can be shown to be necessary to deliver services to eligible health care providers? Should certifications or other evidence of necessity attesting to the use of such support be required from the rural health care provider or the service provider? Are other safeguards required to ensure that no waste, fraud or abuse occurs? Should these charges be prorated over a specified number of years? Commenters should provide specific information on the probable costs, advantages, and disadvantages of supporting such upgrades. Commenters should also provide information regarding the effect on the fund's resources.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

9. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. Important changes in the rural health community over the past few years, such as technological advances and the variety of needs of the rural health care community, prompt us to review the rural health care universal service support mechanism.

10. In this *FNPRM*, we seek comment on whether we should increase the percentage discount that rural health care providers receive for Internet access. To the extent that we were concerned, in the 2003 *Report and Order*, that demand for Internet access support would exceed the annual funding cap, to date, those concerns have not come to fruition at this time. Therefore, we take this opportunity to seek comment on whether a 25 percent flat discount off the cost of monthly Internet access for eligible rural health care providers is sufficient. We also seek comment, in the *FNPRM*, on whether infrastructure development should be funded. In the *1997 Universal Service Order*, the Commission requested comment on whether and how to support infrastructure development or ''network buildout'' needed to enhance public and not-for-profit health care providers' access to advanced telecommunications and information services. At the time, the Commission noted that the record contained anecdotal evidence regarding the need for support for infrastructure development. We now seek to refresh the record on this issue. Additionally, in the *FNPRM*, we seek comment on whether to modify our rules specifically to allow mobile rural health care providers to use services other than satellite. In the companion *Report and Order*, we revise our policy to allow mobile rural health care providers to receive discounts for satellite services calculated by comparing the actual cost of the satellite service to the rate for an urban wireline service with a similar bandwidth. However, we recognize that not only satellite services but other telecommunications platforms, such as terrestrial wireless, may provide the most cost-effective means of providing the telemedicine link. Therefore, because we want to encourage mobile health care providers to consider all available telecommunications services when determining which service best suits the needs of the telemedicine project, we seek comment on whether to allow mobile rural health care providers to use telecommunications services other than satellite.

C. Legal Basis

11. This *FNPRM* is adopted pursuant to sections 1, 4(i), (4j), 201, 202, 254, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201, 202, 254, and 303.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. We have described in detail in the Final Regulatory Flexibility Analysis (FRFA) to the companion *Report and Order* the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service rural health care support mechanism. For this IRFA, we hereby incorporate those entity descriptions by reference.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. This *FNPRM* seeks comment on whether we should increase the percentage discount that rural health care providers receive for Internet access and whether infrastructure development should be funded. These potential changes will not impact

reporting or recordkeeping requirements. They may, however, increase the number of applicants. Additionally, the *FNPRM* seeks comment on whether to modify our policy specifically to allow mobile rural health care providers to use services other than satellite services, such as terrestrial wireless. If this proposal is adopted, mobile rural health care providers could potentially be required to submit additional information regarding their mobile services, if they choose to seek discounts. Any reporting and/or recordkeeping requirements adopted as part of this modification would only minimally impact both small and large entities. However, any minimal impact of such requirements would be outweighed by the benefit of providing support necessary to make mobile telemedicine economical for rural health care providers to provide high-quality health care to rural and remote areas, and to make telecommunications rates for public and non-profit rural health care providers comparable to those paid in urban areas. Further, such requirement/s may be necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

16. In the *FNPRM*, we seek comment on whether we should increase the percentage discount that rural health care providers receive for Internet. We also seek comment on whether infrastructure development should be funded by the universal service fund. Further, in the *Further Notice*, we seek comment on whether to modify our rules specifically to allow mobile rural health care providers to use services other than satellite, such as terrestrial wireless, to provide support to mobile rural health care providers. If these proposals are adopted, we believe the proposed changes will help small businesses by providing additional support under the rural health care mechanism than is currently available and provide rural health care providers with greater flexibility in choosing the services that best suit their needs. These proposed changes could potentially increase the number of applicants, including small entities, seeking support under the rural health care support mechanism. Affected small businesses could include rural health care providers and small companies serving those rural health care providers. In seeking to minimize any burdens imposed on small entities, where doing so does not compromise the goals of the universal service mechanism, we invite comment on alternative ways to minimize any significant economic impact of our proposals on small entities and on any alternatives to these proposals that may be more beneficial to small entities.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None

H. Filing Procedures

18. We invite comment on the issues and questions set forth in the *FNPRM* and IRFAs contained herein. Pursuant to sections 1.415 and 1.419 of the Commission's rules, comments are due on or before April 8, 2005, and reply comments on or before May 9, 2005. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

20. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

21. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

22. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02–60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554 (*see* alternative addresses above for delivery by hand or messenger).

23. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (*see* alternative addresses above for delivery by hand or messenger) (telephone (202) 488–5300; facsimile (202) 488–5563) or via e-mail at *qualexint@aol.com*.

24. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *qualexint@aol.com*.

I. Further Information

25. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*. This *FNPRM* can also be downloaded in Microsoft Word and ASCII formats at *http://www.fcc.gov/ccb/universalservice/highcost*.

26. For further information, contact Regina Brown at (202) 418–0792 or Dana Bradford at (202) 418–1932 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

III. Ordering Clauses

27. Pursuant to the authority contained in §§ 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Further Notice of Proposed Rulemaking* is adopted.

28. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2268 Filed 2–4–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 250

[DFARS Case 2003–D048]

Defense Federal Acquisition Regulation Supplement; Extraordinary Contractual Actions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to processing of requests for extraordinary contract adjustments. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 8, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D048, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D048 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

◦ Update requirements for DoD processing of requests for extraordinary contract adjustments; and

◦ Delete procedures for preparation of records and submittal of requests to a contract adjustment board. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal administrative DoD procedures for processing requests for extraordinary contract adjustments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D048.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 250

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 250 as follows:

1. The authority citation for 48 CFR Part 250 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

2. Section 250.105 is revised to read as follows:

250.105 Records.

Follow the procedures at PGI 250.105 for preparation of records.

3. Section 250.201–70 is amended by revising paragraph (a) and the last sentence of paragraph (b) introductory text to read as follows:

250.201–70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) * * * The agency supplements or agency acquisition guidance shall specify the delegations and levels of authority.

* * * * *

4. Subpart 250.3 is revised to read as follows:

Subpart 250.3—Contract Adjustments

Sec.
250.303–1 Contractor requests.
250.305 Processing cases.
250.306 Disposition.

250.303–1 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

250.305 Processing cases.

(1) At the time the request is filed, the activity shall prepare the record described at PGI 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, the documentation described at PGI 250.305.

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified ''Confidential'' or higher. The board's decision will be sent to the appropriate official for implementation.

250.306 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.306.

[FR Doc. 05–2173 Filed 2–4–05; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket Nos. 030716175–4327–03, 041123329–4329–01; I.D. Nos. 070303A, 110904F]

RIN 0648–AQ77, 0648–AO04

Endangered and Threatened Species; Extension of Public Comment Period on Proposed Critical Habitat Designations for West Coast Salmonids

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are extending the comment period on proposed critical habitat designations for 20 Evolutionarily Significant Units (ESUs) of Pacific salmon and *O. mykiss* (inclusive of anadromous steelhead and resident rainbow trout) listed under the Endangered Species Act of 1973, as amended (ESA). The proposed designations include habitat areas in California, Oregon, Washington, and Idaho. A recent court-approved Amendment to the Consent Decree, that established the schedule for completing these designations, extends the comment period until March 14, 2005, and the date to submit final rules until August 15, 2005. These extensions will allow the public additional time to provide information related to the proposed designations and will provide NMFS with the time needed to review, consider, and respond to comments. We are soliciting information and comments from the public on all aspects of the proposals, including information on the economic, national security, and other relevant impacts of the proposed designations.

DATES: Written comments are due by 5 p.m. Pacific Standard Time on March 14, 2005.

ADDRESSES: Comments pertaining to California ESUs must include reference to docket number [041123329–4329–01] and RIN number [0648–AO04]. Comments pertaining to ESUs in Washington, Oregon, or Idaho must include reference to docket number [030716175–4327–03] and RIN number [0648–AQ77]. You may submit comments by any of the following methods:

• E-mail: For California ESUs, send e-mail comments to critical habitat.swr@noaa.gov. For ESUs in Washington, Oregon, or Idaho, send e-mail comments to critical.habitat.nwr@noaa.gov. In the subject line of your e-mail please include the pertinent docket and RIN numbers specified above.

• Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Agency Web Site: *http://ocio.nmfs.noaa.gov/ibrm-ssi/index.shtml*. Follow the instructions for submitting comments at *http://ocio.nmfs.noaa.gov/ibrm-ssi/process.shtml*.

• Mail: For California ESUs, submit written comments and information to: Assistant Regional Administrator, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. For ESUs in Washington, Oregon, or Idaho, submit written comments and information to: Chief, NMFS, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. You may hand-deliver written comments to our offices during normal business hours at the addresses given above (although after February 18, 2005, the Portland address will change to 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232).

• Fax: Submit fax comments to the NMFS Southwest Regional Office at 562–980–4027, or the NMFS Northwest Regional Office at 503–230–5441.

FOR FURTHER INFORMATION CONTACT: In California, contact Craig Wingert at the address above or at 562–980–4021. In Washington, Oregon, and Idaho, contact Steve Stone at the above address or at 503–231–2317. The proposed rules, maps, and other materials relating to these proposals can be found on the agency's Southwest Region website at *http://swr.nmfs.noaa.gov/salmon.htm* and the Northwest Region website at *http://www.nwr.noaa.gov/1salmon/salmesa/crithab/CHsite.htm*.

SUPPLEMENTARY INFORMATION:

Background

On December 10 and 14, 2004, NMFS published separate critical habitat proposed rules addressing 20 ESUs of Pacific salmon and O. mykiss (inclusive of anadromous steelhead and resident rainbow trout) listed under the ESA. The first proposed rule (69 FR 71880, December 10, 2004) addressed 7 ESUs in California and announced a public comment period extending through February 8, 2005. The second proposed rule (69 FR 74572, December 14, 2004) addressed 13 ESUs in Washington, Oregon, and Idaho, and announced a public comment period extending through February 14, 2005. The timeline for completion of these proposed rules was established pursuant to litigation between NMFS and the Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, the Center for Biological Diversity, the Oregon Natural Resources Council, the Pacific Rivers Council, and the Environmental Protection Information Center (PCFFA *et al.*) and are subject to a Consent Decree and Stipulated Order of Dismissal (Consent Decree) approved by the D.C. District Court.

We received several requests, including a request from PCFFA et al., to extend the public comment period. We recently submitted to the D.C. District Court a joint request with PCFFA et al. to extend the comment period and to modify the schedule for submission of final rules designating critical habitat for the 20 ESUs to the **Federal Register** established in the Consent Decree. The court approved the joint request on January 26, 2005. Pursuant to that approval we are extending the deadline for accepting public comments on both proposed rules until March 14, 2005. Also, on or before August 15, 2005, we will complete both rulemakings by submitting to the **Federal Register** for publication the final rules designating critical habitat for those of the 20 ESUs that are included on the lists of threatened and endangered species as of August 15, 2005. These extensions will allow the public additional time to provide information related to the proposed designations and will provide us with the time needed to review, consider, and respond to comments.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 1, 2005.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 05–2292 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050125016–5016–01; I.D. 011805C]

RIN 0648–AS61

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the International Pacific Halibut Commission's (IPHC) regulatory Area 2A off Washington, Oregon, and California (Area 2A) Pacific Halibut Catch Sharing Plan (Plan) to: allow remaining quota from Washington's south coast subarea to be used to accommodate incidental catch in the south coast nearshore fishery; allow quota projected to be unused to be transferred from Oregon's central coast subarea to another subarea south of Leadbetter Point, WA; revise the season structure for Oregon's all-depth spring and summer sport fisheries; provide more flexibility for Oregon's inseason sport fishery management (triggers for additional fishery openings and bag limits in the all-depth summer fishery); revise the public announcement process for Oregon's all-depth summer sport fishery; revise the Columbia River subarea quota contributions from Oregon/California; remove the minimum length requirement in all subareas south of Leadbetter Point, WA; prohibit retention of all groundfish, except sablefish, in Oregon's and possibly Washington's Columbia River fishery on all days and in the Central Coast fisheries on ''all-depth'' days; implement a closed area off Oregon's coast; and revise all coordinates from degrees minutes seconds to degrees decimal minutes. NMFS also proposes to revise the coordinates for the closed area to Oregon's central coast recreational fishery and to non-treaty commercial halibut fishing in Area 2A. NMFS is also proposing to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A, the flexible inseason management provisions in Area 2A, fishery election in Area 2A,

and Area 2A non-treaty commercial fishery closed areas. These actions are intended to enhance the conservation of Pacific halibut, to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries, and to provide greater angler opportunity where available.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on March 16, 2005.

ADDRESSES: Copies of the Plan, Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and/or Categorical Exclusion (CE) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2005, and of the draft EA/RIR/IRFA are also available at the NMFS Northwest Region website: *http://www.nwr.noaa.gov*, click on ''Pacific Halibut.''

You may submit comments on the proposed rule for the Plan and to domestic Area 2A halibut management measures or supporting documents, identified by [*011805C*], by any of the following methods:

- E-mail: *PHalibut2005.nwr@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.
- Fax: 206–526–6736, Attn: Jamie Goen.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6150, fax: 206–526–6736 or e-mail: *jamie.goen@noaa.gov* or *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act) of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC plus 25,000 lb (11.3 mt) to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent minus 25,000 lb (11.3 mt) to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry longline sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations

Each year, the states (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW)) and tribes consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2004 Pacific Council meeting, the states recommended several changes to the Plan and the tribes announced that they had no proposal for revising the Plan in 2005. Following the meeting, the states again reviewed their proposals with the public and drafted their recommended revisions for review by the Pacific Council.

At its November 1–5, 2004, meeting in Portland, OR, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan and public comments, and made the final recommendations for modifications to the Plan as follows:

(1) Allow remaining quota from Washington's south coast subarea to be used to accommodate incidental catch in the south coast nearshore fishery.

(2) Revise the Columbia River subarea quota contributions from Oregon/California to equal the amount of pounds contributed by Washington.

(3) Remove the minimum length requirement in all subareas south of Leadbetter Point, WA.

(4) Revise the season structure for Oregon's all-depth spring and summer sport fisheries in Oregon's central coast subarea (Cape Falcon to Humbug Mountain) from 2–days to 3–days by adding Thursdays to all spring fishery openings after the initial fixed day openings and by adding Sundays to all summer fishery openings.

(5) Provide more flexibility for Oregon's inseason sport fishery management by adding triggers for additional fishery openings and bag limits in the central coast all-depth summer fishery as follows: (a) if after the first scheduled open period of the summer fishery, the remaining central coast quota (combined all-depth and inside 40–fm (73–m) fishery quotas) is 60,000 lbs (27.2 mt) or more, the fishery reopens every Friday through Sunday until October 31 or quota attainment, whichever is earlier; and (b) if after the third scheduled open period of the summer fishery, the remaining central coast quota (combined all-depth and inside 40–fm (73–m) fishery quotas) is 30,000 lbs (13.6 mt) or more, the fishery reopens every Friday through Sunday until October 31 or quota attainment, whichever is earlier, and the bag limit would increase to two fish per person per day.

(6) Prohibit the retention of all groundfish, except sablefish when allowed by groundfish regulation, in the Columbia River fishery during all days and in the Central Coast fisheries during ''all-depth'' days.

(7) Revise the public announcement process for the Oregon central coast all-

depth summer sport fishery to allow inseason changes to transfer quota and to change the fishery season dates based on the triggers mentioned above to be announced by NMFS via an update to the recreational halibut hotline (i.e., no **Federal Register** document would be required).

(8) Allow quota projected to be unused to be transferred from Oregon's central coast subarea to another subarea south of Leadbetter Point, WA.

(9) Implement a closed area to recreational halibut fishing off Oregon's central coast on a portion of Stonewall Bank to protect yelloweye rockfish, an overfished groundfish species. This closed area, called a ''yelloweye rockfish conservation area,'' would be defined by connecting the following coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

(6) and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

There is confusion over Pacific Council recommendation ı6 (above) as to how it would apply to the Columbia River subarea, which is shared by Washington and Oregon. Therefore, NMFS has requested that the Pacific Council clarify this recommendation at the March 6–11, 2005, Pacific Council meeting in Sacramento, CA. The Council adopted a recommendation for ''Sub-areas south of Leadbetter Point, Washington'' that stated ''No groundfish retention except sablefish allowed during the all-depth fishery if halibut are on-board the vessel except south of Humbug Mt.'' After the March meeting it became apparent that various Council participants were confused as to exactly where this prohibition would apply. Because of the introductory description (Sub-areas south of Leadbetter Point, Washington), some thought it applied in the entire Columbia River area and the Oregon Central Coast subarea. However, others thought this would only apply off Oregon because it was introduced by Oregon, it had not been discussed in Washington State meetings with Washington fishermen, and because one purpose was to allow dockside enforcement during the groundfish closure seaward of 40 fm (73 m), which only is in place off of Oregon. NMFS has concluded the two possible ways to implement this provision in the Columbia River subarea would be to apply the groundfish retention prohibition to all halibut fishing in the Columbia River subarea or only to vessels that land in Oregon.

Therefore, the Pacific Council will clarify its recommendation at the March 2005 meeting, and the public comment period on this proposed rule will end on March 16, 2005.

Proposed Changes to the Plan

In addition to the Pacific Council's recommendations, NMFS is proposing to revise all coordinates in the Plan from degrees minutes seconds to degrees decimal minutes in order to conform with U.S. Coast Guard standards and the Pacific coast groundfish regulations. NMFS is proposing to approve the Pacific Council recommendations and to implement the above-described changes by making the following changes to the Plan:

In section (d) of the Plan, Treaty Indian Fisheries, revise the first sentence of the first paragraph to read as follows:

Except as provided above in (b)(2), 35 percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53.30′ N. lat.) and east of 125°44.00′ W. long.

In section (e) of the Plan, Non-Indian Commercial Fisheries, revise the third sentence of paragraph (2) to read as follows:

This fishery is confined to the area south of Subarea 2A–1 (south of Point Chehalis, WA; 46°53.30′ N. lat.).

In section (f) of the Plan, Sport Fisheries, revise the second sentence of paragraph (1)(i) to read as follows:

This subarea is defined as all U.S. waters east of the mouth of the Sekiu River, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., including Puget Sound.

In section (f) of the Plan, Sport Fisheries, revise the second sentence of paragraph (1)(ii) to read as follows:

This subarea is defined as all U.S. waters west of the mouth of the Sekiu River, as defined above in paragraph (f)(1)(i), and north of the Queets River (47°31.70′ N. lat.).

In section (f) of the Plan, Sport Fisheries, revise the last sentence of paragraph (1)(ii) to read as follows:

A ''C-shaped'' yelloweye rockfish conservation area that is closed to recreational groundfish and halibut fishing is defined by the following coordinates in the order listed:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.; and connecting back to 48°18.00′ N. lat.; 125°18.00′ W.long.

In section (f) of the Plan, Sport Fisheries, revise paragraph (1)(iii) from the second sentence to the end of the paragraph to read as follows:

This subarea is defined as waters south of the Queets River (47°31.70′ N. lat.) and north of Leadbetter Point (46°38.17′ N. lat.). The structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery will open on May 1. If May 1 falls on a Friday or Saturday, the fishery will open on the following Sunday. The fishery will be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open 7 days per week in the area from Queets River south to 47°00.00′ N. lat. and east of 124°40.00′ W. long. Beginning July 1, the halibut fishery will be open 7 days per week. The fishery will continue until September 30, or until the quota is achieved, whichever occurs first. Subsequent to this closure, if there is insufficient quota remaining to reopen the entire subarea for another fishing day, then any remaining quota may be used to accommodate incidental catch in the nearshore area from Queets River south to 47°00.00′ N. lat. and east of 124°40.00′ W. long. or be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline. The daily bag limit is one halibut per person, with no size limit.

In section (f) of the Plan, Sport Fisheries, revise paragraph (1)(iv) regarding the Columbia River subarea to read as follows:

This sport fishery subarea is allocated 2.0 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 4.0 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan). This subarea also is allocated from the Oregon/California sport allocation the number of pounds equal to the Washington contribution. Oregon's contribution will be 2.0 percent of the total Oregon/

California sport allocation. Any additional pounds needed to equal the number of pounds contributed to the Columbia River subarea from the Washington allocation will come from the Oregon Central Coast subarea allocation. This subarea is defined as waters south of Leadbetter Point, WA (46°38.17′ N. lat.) and north of Cape Falcon, OR (45°46.00′ N. lat.). The fishery will open on May 1, and continue 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining state's quota would be transferred to that state. The daily bag limit is one halibut per person, with no size limit. [The following two options are being considered. Option 1: No groundfish may be retained, except sablefish when allowed by groundfish regulations, by anglers landing in Oregon if halibut are on board the vessel; or option 2: No groundfish may be retained, except sablefish when allowed by groundfish regulations, if halibut are on board the vessel.]

In section (f) of the Plan, Sport Fisheries, revise paragraph (1)(v) to read as follows:

This subarea extends from Cape Falcon (45°46.00′ N. lat.) to Humbug Mountain, OR (42°40.50′ N. lat.) and is allocated 95.0 percent of the Oregon/California sport allocation minus any amount of pounds needed to contribute to the Oregon portion of the Columbia River subarea quota. The structuring objectives for this subarea are to provide two periods of fishing opportunity in spring and in summer in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and to provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed season dates will be established preseason for the spring opening and will not be modified inseason except that the spring opening may be modified inseason if the combined Oregon all-depth spring and summer season total quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the spring fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season quota. ODFW will monitor landings and provide a post-season estimate of catch within one week of the end of the fixed season. If sufficient catch remains for an additional day of fishing after the spring season, openings will be provided if possible in May - July. Potential additional open dates for both the spring (May - July) and summer (August - October) seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more such additional days, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the spring all-depth subquota will be added to the summer all-depth sub-quota. Any poundage that is not needed to extend the inside 40–fm (73–m) fishery through to October 31 will be added to the summer all-depth season if it can be used, and any poundage remaining unharvested from the summer all-depth fishery will be added to the inside 40–fm (73–m) fishery subquota, if it can be used. The daily bag limit is one halibut per person, unless otherwise specified, with no size limit. During days open to all-depth halibut fishing, no groundfish may be retained, except sablefish when allowed by groundfish regulations, if halibut are on board the vessel. A yelloweye rockfish conservation area that is closed to recreational halibut fishing is defined by the following coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

(6) and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows:

A. The first season opens on May 1, only in waters inside the 40–fm (73–m) curve, and continues daily until the subquota (8 percent of the subarea quota) is taken, or until October 31, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through October 31 will be transferred to the summer all-depth fishery if it can be used. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 40–fm (73–m) curve fishery.

B. The second season is an all-depth fishery with two potential openings. The first opening begins on the second Thursday in May (if the season is five more fishing days) or the second Friday in May (if the season is four or fewer fishing days) and is allocated 69 percent of the subarea quota. Fixed season dates for the first opening will be established preseason based on projected catch per day and number of days to achievement of the subquota for this season. The first opening will be structured for two days per week (Friday and Saturday) if the season is for four or fewer fishing days. The fishery will be structured for three days per week (Thursday through Saturday) if the season is for five or more fishing days. The fixed season dates will be established preseason and will occur in consecutive weeks starting the second Thursday in May (if the season is five or more fishing days) or second Friday in May (if the season is four or fewer fishing days), with exceptions to avoid adverse tidal conditions. If, following the ''fixed'' dates, quota for this season remains unharvested, a second opening will be held. The fishery will be open every other week on Thursday through Saturday except that week(s) could be skipped to avoid adverse tidal conditions. The potential open Thursdays through Saturdays will be identified preseason. The fishery will continue until there is insufficient quota for an additional day of fishing or July 31, whichever occurs first. Any remaining quota will be added to the summer quota. No inseason adjustments will be made to the established fixed season unless the combined Oregon all-depth spring and summer season total subquotas are estimated to be achieved.

C. The last season is an all-depth fishery that begins on the first Friday in August and is allocated 23 percent of the subarea quota. The fishery will be structured to be open every other week on Friday through Sunday except that week(s) could be skipped to avoid adverse tidal conditions. The potential open Fridays through Sundays will be identified preseason. If after the first scheduled open period, the remaining Cape Falcon to Humbug Mountain entire season quota (combined all-depth and inside 40–fm (73–m) quotas) is 60,000 lb (27.2 mt) or more, the fishery will re-open on every Friday through Sunday (versus every other weekend), if determined to be appropriate through joint consultation between IPHC, NMFS, and ODFW. Any excess quota projected

to remain after the needs of the inside 40–fm (73–m) fishery are met would be transferred into the remaining all-depth quota. The inseason action will be announced by NMFS via an update to the recreational halibut hotline. If after the third scheduled open period, the remaining Cape Falcon to Humbug Mountain entire season quota (combined all-depth and inside 40–fm (73–m) quotas) is 30,000 lb (13.6 mt) or more, the fishery will re-open on every Friday through Sunday (versus every other weekend), if determined to be appropriate through joint consultation between IPHC, NMFS, and ODFW. Under this provision, after the third scheduled open period, the bag limit would be two fish per person, with no size limit. Any excess quota projected to remain after the needs of the inside 40–fm (73–m) fishery are met would be transferred into the remaining all-depth quota. The inseason action will be announced by NMFS via an update to the recreational halibut hotline. The fishery will continue until there is insufficient quota for an additional day of fishing or October 31, whichever occurs first. Any remaining quota will be transferred to the fishery inside the 40–fm (73–m) curve, if needed. If inseason it is determined that the combined all-depth and inside 40–fm (73–m) fisheries will not harvest the entire quota to the subarea, quota may be transferred inseason to another subarea south of Leadbetter Point, WA, by NMFS via an update to the recreational halibut hotline.

In section (f) of the Plan, Sport Fisheries, revise the second through fourth sentences in paragraph (1)(vi) to read as follows:

This area is defined as the area south of Humbug Mountain, OR (42°40.50′ N. lat.), including California waters. The structuring objective for this subarea is to provide anglers the opportunity to fish in a continuous, fixed season that is open from May 1 through October 31. The daily bag limit is one halibut per person, with no size limit.

Proposed 2005 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 2005. The 2005 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 18–21, 2005, in Victoria, B.C. Because the 2005 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC's preliminary 2005 Area 2A TAC recommendation of 1,330,000 lb (603 mt), which is lower than the 2004 TAC of 1,480,000 lb (671 mt). The proposed 2005 sport fishery regulations based on the preliminary 2005 Area 2A TAC of 1,330,000 lb (603 mt) are as follows:

Washington Inside Waters Subarea

This subarea is defined as all U.S. waters east of the mouth of the Sekiu River, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., including Puget Sound. This subarea would be allocated 64,800 lb (29 mt) at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. According to the Plan, the structuring objective for this subarea is to provide a stable sport fishing opportunity and to maximize the season length. For the 2005 fishing season, the fishery in this subarea would be set to meet the structuring objectives described in the Plan. The final determination of the season dates would be based on the allowable harvest level and projected 2005 catch rates after the 2005 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day, per person.

Washington North Coast Subarea

This subarea is defined as all U.S. waters west of the mouth of the Sekiu River and north of the Queets River (47°31.70′ N. lat.). This subarea would be allocated 115,437 lb (52 mt) at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. According to the Plan, the management objective for this subarea is to provide a quality recreational fishing opportunity during May and the latter part of June. The fishery opens on the first Tuesday between May 9 and May 15 (May 10 in 2005), and continues 5 days per week (Tuesday through Saturday) until 72 percent of the quota for the subarea has been taken, 83,115 lb (38 mt), and the season is closed by the IPHC. The fishery will re-open during the third week in June and continue Tuesday through Saturday until the overall quota for the subarea is taken and the season is closed by the IPHC. The daily bag limit would be one halibut of any size per day per person. A portion of this subarea would be closed to sport fishing for halibut as a yelloweye rockfish conservation area bounded by the following coordinates:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.;

(9) and connecting back to 48°18.00′ N. lat.; 125°18.00′ W. long.

Washington South Coast Subarea

This subarea is defined as waters south of the Queets River (47°31.70′ N. lat.) and north of Leadbetter Point (46°38.17′ N. lat.). This subarea would be allocated 50,146 lb (23 mt)at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. According to the Plan, the structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery would open on May 1 and continue five days per week (Sunday through Thursday) until September 30, or until the quota is achieved, and the fishery is closed by the IPHC, whichever occurs first. The fishery would be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open seven days per week in the area from the Queets River, WA south to 47°00.00′ N. lat. and east of 124°40.00′ W. long. Beginning July 1, the halibut fishery opens seven days per week in the offshore and nearshore fisheries until September 30, or until the quota is achieved and the fishery is closed by the IPHC, whichever occurs first. New for 2005, if there is insufficient quota to reopen the entire south coast subarea for another fishing day, then any remaining quota may be transferred to the nearshore area from the Queets River, WA south to 47°00.00′ N. lat. and east of 124°40.00′ W. long. to accommodate incidental catch in that fishery. The daily bag limit would be one halibut of any size per day, per person.

Columbia River Subarea

This subarea is defined as waters south of Leadbetter Point, WA (46°38.17′ N. lat.) and north of Cape Falcon, OR (45°46.00′ N. lat.). This subarea would be allocated 13,747 lb (6 mt) at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. New for 2005, language will be added to the Plan to increase the number of pounds contributed to this subarea from Oregon/California to match the number contributed by Washington. To reach this matching number of pounds, Oregon will contribute pounds from its Central Coast subarea, as needed, in addition to the 2 percent from the Oregon/California sport allocation. If

there is insufficient quota for another fishing day after closure of the subarea, any remaining state's quota would be transferred to that state. The fishery would open on May 1 and continue 7 days per week until the subarea quota is reached and the fishery is closed by the IPHC or September 30, whichever occurs first. Also new for 2005, the minimum length requirement for halibut in this subarea will be removed. Therefore, the daily bag limit would be one halibut of any size per day, per person.

In addition, as explained in the section of this proposed rule's preamble on ''Pacific Council recommended changes to the Plan and domestic fishing regulations,'' there are two options being considered for groundfish retention in this subarea. Under Option 1 no groundfish may be retained, except sablefish when allowed by groundfish regulations, by anglers landing in Oregon if halibut are on board the vessel. Under Option 2 no groundfish may be retained, except sablefish when allowed by groundfish regulations, if halibut are on board the vessel.

Oregon Central Coast Subarea

This subarea extends from Cape Falcon (45°46.00′ N. lat.) to Humbug Mountain, OR (42°40.50′ N. lat.). This subarea would be allocated 251,264 lb (114 mt) at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. As mentioned in the Columbia River subarea, the Oregon Central Coast fishery will contribute quota pounds to the Columbia River subarea to allow the Oregon/California contribution to match the Washington contribution. Thus, for 2005, the Central Coast allocation will be 95 percent of the Oregon/California sport allocation minus the amount of pounds needed to contribute to the Oregon portion of the Columbia River subarea quota. The structuring objectives for this subarea are to provide two periods of fishing opportunity in spring (May-June) and in summer (August-October) in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and to provide a period of fishing opportunity during the summer in nearshore waters for small boat anglers.

The central coast restricted depth fishery, or ''inside 40–fm (73–m)'' fishery, which occurs inside of a boundary line approximating the 40–fm (73–m) depth contour, would be allocated 20,101 lb (9 mt), starting May 1 through October 31 (seven days per week) or until the allocated subquota is attained, whichever occurs first. New for 2005, all groundfish, except sablefish when allowed by groundfish regulation, may not be retained in the inside 40–fm (73–m) fishery if halibut are onboard the vessel during days open to all-depth fishing. Proposed coordinates for the boundary line approximating the 40–fm (73–m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. are defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00′ N. lat., 124°04.49′ W. long.;
(2) 45°44.34′ N. lat., 124°05.09′ W. long.;
(3) 45°40.64′ N. lat., 124°04.90′ W. long.;
(4) 45°33.00′ N. lat., 124°04.46′ W. long.;
(5) 45°32.27′ N. lat., 124°04.74′ W. long.;
(6) 45°29.26′ N. lat., 124°04.22′ W. long.;
(7) 45°20.25′ N. lat., 124°04.67′ W. long.;
(8) 45°19.99′ N. lat., 124°04.62′ W. long.;
(9) 45°17.50′ N. lat., 124°04.91′ W. long.;
(10) 45°11.29′ N. lat., 124°05.19′ W. long.;
(11) 45°05.79′ N. lat., 124°05.40′ W. long.;
(12) 45°05.07′ N. lat., 124°05.93′ W. long.;
(13) 45°03.83′ N. lat., 124°06.47′ W. long.;
(14) 45°01.70′ N. lat., 124°06.53′ W. long.;
(15) 44°58.75′ N. lat., 124°07.14′ W. long.;
(16) 44°51.28′ N. lat., 124°10.21′ W. long.;
(17) 44°49.49′ N. lat., 124°10.89′ W. long.;
(18) 44°44.96′ N. lat., 124°14.39′ W. long.;
(19) 44°43.44′ N. lat., 124°14.78′ W. long.;
(20) 44°42.27′ N. lat., 124°13.81′ W. long.;
(21) 44°41.68′ N. lat., 124°15.38′ W. long.;
(22) 44°34.87′ N. lat., 124°15.80′ W. long.;
(23) 44°33.74′ N. lat., 124°14.43′ W. long.;
(24) 44°27.66′ N. lat., 124°16.99′ W. long.;
(25) 44°19.13′ N. lat., 124°19.22′ W. long.;
(26) 44°15.35′ N. lat., 124°17.37′ W. long.;
(27) 44°14.38′ N. lat., 124°17.78′ W. long.;
(28) 44°12.80′ N. lat., 124°17.18′ W. long.;
(29) 44°09.23′ N. lat., 124°15.96′ W. long.;
(30) 44°08.38′ N. lat., 124°16.80′ W. long.;
(31) 44°08.30′ N. lat., 124°16.75′ W. long.;
(32) 44°01.18′ N. lat., 124°15.42′ W. long.;
(33) 43°51.60′ N. lat., 124°14.68′ W. long.;
(34) 43°42.66′ N. lat., 124°15.46′ W. long.;
(35) 43°40.49′ N. lat., 124°15.74′ W. long.;
(36) 43°38.77′ N. lat., 124°15.64′ W. long.;
(37) 43°34.52′ N. lat., 124°16.73′ W. long.;
(38) 43°28.82′ N. lat., 124°19.52′ W. long.;
(39) 43°23.91′ N. lat., 124°24.28′ W. long.;
(40) 43°20.83′ N. lat., 124°26.63′ W. long.;
(41) 43°17.96′ N. lat., 124°28.81′ W. long.;
(42) 43°16.75′ N. lat., 124°28.42′ W. long.;
(43) 43°13.98′ N. lat., 124°31.99′ W. long.;
(44) 43°13.71′ N. lat., 124°33.25′ W. long.;
(45) 43°12.26′ N. lat., 124°34.16′ W. long.;
(46) 43°10.96′ N. lat., 124°32.34′ W. long.;
(47) 43°05.65′ N. lat., 124°31.52′ W. long.;
(48) 42°59.66′ N. lat., 124°32.58′ W. long.;
(49) 42°54.97′ N. lat., 124°36.99′ W. long.;
(50) 42°53.81′ N. lat., 124°38.58′ W. long.;
(51) 42°50.00′ N. lat., 124°39.68′ W. long.;
(52) 42°49.14′ N. lat., 124°39.92′ W. long.;
(53) 42°46.47′ N. lat., 124°38.65′ W. long.;
(54) 42°45.60′ N. lat., 124°39.04′ W. long.;
(55) 42°44.79′ N. lat., 124°37.96′ W. long.;
(56) 42°45.00′ N. lat., 124°36.39′ W. long.;
(57) 42°44.14′ N. lat., 124°35.16′ W. long.;
(58) 42°42.15′ N. lat., 124°32.82′ W. long.;
(59) 42°40.50′ N. lat., 124°31.98′ W. long.; and
(60) 42°38.82′ N. lat., 124°31.09′ W. long.

If NMFS changes this boundary for recreational groundfish fishing by an inseason action to the Pacific Coast groundfish regulations during the year to protect overfished groundfish species, NMFS will also publish a separate inseason action in the **Federal Register** to change nearshore recreational halibut regulations for this subarea to mirror the

groundfish closure. Language will also be added to the sport management measures for 2005 such that, in times when the all-depth halibut fishery is closed and halibut fishing is permitted only inshore of a boundary line approximating the 40–fm (73–m) depth contour, halibut possession and retention by vessels operating offshore of 40–fm (73–m) would be prohibited.

The spring all-depth season would be allocated 173,372 lb (79 mt). Based on an observed catch per day trend in this fishery in recent years, an estimated 10,000 – 30,000 lb (5 – 14 mt) would be caught per day in 2005, resulting in a 5 to 17–day fixed season. In accordance with the Plan, the season would open on Thursday, May 12 and continue on Thursdays through Saturdays through the fixed dates, with exceptions to avoid adverse tidal conditions. The fixed dates will be set in spring 2005 after the IPHC sets the final Area 2A TAC and after ODFW holds public meetings. After the fixed date season, potential additional fishing days for remaining quota in 2005 are structured differently than in previous years. For 2005, if additional quota remains after the fixed season, a second opening would be held for the spring fishery. The second opening would be on every other week on Thursday through Saturday except that week(s) could be skipped to avoid adverse tidal conditions. For 2005, the weeks to be skipped due to adverse tidal conditions in either the first or second spring opener may include May 26 – 28, June 23 – 25 and July 21 – 23. Final determination of the week(s) that may be skipped due to adverse tidal conditions will occur after the 2005 TAC has been set by the IPHC and after ODFW's late January/early February public meeting. If a decision is made inseason by NMFS to allow fishing in the potential spring season, notice of an opening will be announced on the NMFS hotline, (206)526–6667 or (800)662–9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline. The second spring season would continue until there is insufficient quota for an additional fishing day or until July 31, whichever occurs first. Also new for 2005, all groundfish, except sablefish when allowed by groundfish regulation, may not be retained if halibut are onboard the vessel during days open to all-depth fishing. In addition, a new yelloweye rockfish conservation area off Oregon will be closed to recreational halibut fishing and is defined by the following coordinates:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

(6) and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

The summer all-depth fishery would be allocated 57,791 lb (26 mt), and would open on Friday, August 5. New for 2005, this fishery's season will be restructured from being open every other week on Friday and Saturday to every other week on Friday through Sunday, except that week(s) may be skipped for adverse tidal conditions. For 2005, no adverse tidal conditions are predicted to occur during the August through October period. Final determination of the week(s) that may be skipped due to adverse tidal conditions will occur after the 2005 TAC has been set by the IPHC and after ODFW's late January/early February public meeting. Also new for 2005, additional fishing days may be opened if a certain amount of quota remains after the first and third scheduled open periods for the summer all-depth fishery in this subarea. If after the first opener, greater than or equal to 60,000 lbs (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open on every Friday through Sunday (versus every other Friday through Sunday). If after the third opener, greater than or equal to 30,000 lbs (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open on every Friday through Sunday and the bag limit would be two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days and what days will comprise such opening. Any inseason adjustments will also be announced on the NMFS hotline. No halibut fishing will be allowed in the summer all-depth fishery unless the dates are announced on the NMFS hotline. The summer all-depth fishery would continue until there is insufficient quota for an additional fishing day and the fishery is closed by the IPHC or until October 31, whichever occurs first. Any remaining quota would be added to the quota for the fishery inside 40–fm (73–m), if needed. Also new for 2005, language will be added to the Plan to allow for any remaining quota that the all-depth and inside 40–fm (73–m) fisheries are not projected to attain in this subarea to be transferred inseason to another subarea south of Leadbetter Point, WA, via an update to the halibut hotline. For 2005, all groundfish, except sablefish when allowed by groundfish regulation, may not be retained if halibut are onboard the vessel during days open to all-depth fishing. In addition, a new yelloweye rockfish conservation area off Oregon will be closed to recreational halibut fishing and is defined by the following coordinates:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124° 21.80 W. long.;

(4) 44° 28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

(6) and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW in late January/early February after the 2005 TAC has been set by the IPHC. Also new for 2005, the minimum length requirement for halibut in this subarea will be removed. Therefore, the daily bag limit would be one halibut, unless otherwise specified, of any size per day, per person.

Humbug Mountain, OR through California Subarea

This area is defined as the area south of Humbug Mountain, OR (42°40.50′ N. lat.), including California waters. This subarea would be allocated 7,984 lb (3.6 mt) at an Area 2A TAC of 1,330,000 lb (603 mt) in accordance with the Plan. The proposed 2005 sport season for this subarea would be the same as last year, with a May 1 opening and continuing seven days per week, until October 31. New for 2005, the minimum length requirement for halibut in this subarea will be removed. Therefore, the daily bag limit would be one halibut of any size per day, per person.

Flexible Inseason Management Provisions in Area 2A

The flexible inseason management provisions in Area 2A have not changed since 2004, but are republished here to provide opportunity for public comment. Section 25 of the annual halibut management measures published in the **Federal Register** and section (f)(5) of the Plan will read as follows:

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the

Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations.

(a) The action is necessary to allow allocation objectives to be met.

(b) The action will not result in exceeding the catch limit for the area.

(c) If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

(d) If any of the sport fishery subareas south of Leadbetter Point, WA are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(a) Modification of sport fishing periods;

(b) Modification of sport fishing bag limits;

(c) Modification of sport fishing size limits;

(d) Modification of sport fishing days per calendar week; and

(e) Modification of subarea quotas north of Cape Falcon, OR.

(3) Notice procedures.

(a) Actions taken under this section will be published in the **Federal Register**.

(b) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through October) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(a) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the **Federal Register**, whichever is later.

(b) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(c) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

Fishery Election in Area 2A

The fishery election process in Area 2A has not changed since 2004, except to update the reference to the sablefish regulations at 50 CFR 660.372 in paragraph (1)(b). The management measures are republished here to provide opportunity for public comment. Section 26 of the annual halibut management measures published in the **Federal Register** will continue to read as follows:

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 24;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8 and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.372; or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 24 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 in Area 2A.

Area 2A Non-Treaty Commercial Fishery Closed Area

Similar to 2003 and 2004, large closed areas will apply to commercial vessels operating in the directed non-treaty commercial fishery for halibut in Area 2A. Some coordinates for the closed areas have changed slightly from 2004. For 2005, section 27 of the annual halibut management measures will read as follows:

Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Coordinates for the specific closed area boundaries are as follows:

(1) Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA is the shoreline.

(2) Between 46°16′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern, inshore boundary approximating 30–fm (55–m). Between 46°16′ N. lat. and 40°10′ N. lat., the eastern boundary for the RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°13.05′ W. long.;

(2) 46°07.00′ N. lat., 124°07.01′ W. long.;

(3) 45°55.95′ N. lat., 124°02.23′ W. long.;

(4) 45°54.53′ N. lat., 124°02.57′ W. long.;
(5) 45°50.65′ N. lat., 124°01.62′ W. long.;
(6) 45°48.20′ N. lat., 124°02.16′ W. long.;
(7) 45°46.00′ N. lat., 124°01.86′ W. long.;
(8) 45°43.47′ N. lat., 124°01.28′ W. long.;
(9) 45°40.48′ N. lat., 124°01.03′ W. long.;
(10) 45°39.04′ N. lat., 124°01.68′ W. long.;
(11) 45°35.48′ N. lat., 124°01.89′ W. long.;
(12) 45°29.81′ N. lat., 124°02.45′ W. long.;
(13) 45°27.96′ N. lat., 124°01.89′ W. long.;
(14) 45°27.22′ N. lat., 124°02.67′ W. long.;
(15) 45°24.20′ N. lat., 124°02.94′ W. long.;
(16) 45°20.60′ N. lat., 124°01.74′ W. long.;
(17) 45°20.25′ N. lat., 124°01.85′ W. long.;
(18) 45°16.44′ N. lat., 124°03.22′ W. long.;
(19) 45°13.63′ N. lat., 124°02.70′ W. long.;
(20) 45°11.04′ N. lat., 124°03.59′ W. long.;
(21) 45°08.55′ N. lat., 124°03.47′ W. long.;
(22) 45°02.82′ N. lat., 124°04.64′ W. long.;
(23) 45°03.38′ N. lat., 124°04.79′ W. long.;
(24) 44°58.06′ N. lat., 124°05.03′ W. long.;
(25) 44°53.97′ N. lat., 124°06.92′ W. long.;
(26) 44°48.89′ N. lat., 124°07.04′ W. long.;
(27) 44°46.94′ N. lat., 124°08.25′ W. long.;
(28) 44°42.72′ N. lat., 124°08.98′ W. long.;
(29) 44°38.16′ N. lat., 124°11.48′ W. long.;
(30) 44°33.38′ N. lat., 124°11.54′ W. long.;
(31) 44°28.51′ N. lat., 124°12.03′ W. long.;
(32) 44°27.65′ N. lat., 124°12.56′ W. long.;
(33) 44°19.67′ N. lat., 124°12.37′ W. long.;
(34) 44°10.79′ N. lat., 124°12.22′ W. long.;
(35) 44°09.22′ N. lat., 124°12.28′ W. long.;
(36) 44°08.30′ N. lat., 124°12.30′ W. long.;
(37) 44°00.22′ N. lat., 124°12.80′ W. long.;
(38) 43°51.56′ N. lat., 124°13.17′ W. long.;
(39) 43°44.26′ N. lat., 124°14.50′ W. long.;
(40) 43°33.82′ N. lat., 124°16.28′ W. long.;
(41) 43°28.66′ N. lat., 124°18.72′ W. long.;
(42) 43°23.12′ N. lat., 124°24.04′ W. long.;
(43) 43°20.83′ N. lat., 124°25.67′ W. long.;
(44) 43°20.49′ N. lat., 124°25.90′ W. long.;
(45) 43°16.41′ N. lat., 124°27.52′ W. long.;
(46) 43°14.23′ N. lat., 124°29.28′ W. long.;
(47) 43°14.03′ N. lat., 124°28.31′ W. long.;
(48) 43°11.92′ N. lat., 124°28.26′ W. long.;
(49) 43°11.02′ N. lat., 124°29.11′ W. long.;
(50) 43°10.13′ N. lat., 124°29.15′ W. long.;
(51) 43°09.27′ N. lat., 124°31.03′ W. long.;
(52) 43°07.73′ N. lat., 124°30.92′ W. long.;
(53) 43°05.93′ N. lat., 124°29.64′ W. long.;
(54) 43°01.59′ N. lat., 124°30.64′ W. long.;
(55) 42°59.73′ N. lat., 124°31.16′ W. long.;
(56) 42°53.75′ N. lat., 124°36.09′ W. long.;
(57) 42°50.00′ N. lat., 124°38.39′ W. long.;
(58) 42°49.37′ N. lat., 124°38.81′ W. long.;
(59) 42°46.42′ N. lat., 124°37.69′ W. long.;
(60) 42°46.07′ N. lat., 124°38.56′ W. long.;
(61) 42°45.29′ N. lat., 124°37.95′ W. long.;
(62) 42°45.61′ N. lat., 124°36.87′ W. long.;
(63) 42°44.28′ N. lat., 124°33.64′ W. long.;
(64) 42°42.75′ N. lat., 124°31.84′ W. long.;
(65) 42°40.50′ N. lat., 124°29.67′ W. long.;
(66) 42°40.04′ N. lat., 124°29.19′ W. long.;
(67) 42°38.09′ N. lat., 124°28.39′ W. long.;
(68) 42°36.72′ N. lat., 124°27.54′ W. long.;
(69) 42°36.56′ N. lat., 124°28.40′ W. long.;
(70) 42°35.76′ N. lat., 124°28.79′ W. long.;
(71) 42°34.03′ N. lat., 124°29.98′ W. long.;
(72) 42°34.19′ N. lat., 124°30.58′ W. long.;
(73) 42°31.27′ N. lat., 124°32.24′ W. long.;
(74) 42°27.07′ N. lat., 124°32.53′ W. long.;
(75) 42°24.21′ N. lat., 124°31.23′ W. long.;
(76) 42°20.47′ N. lat., 124°28.87′ W. long.;
(77) 42°14.60′ N. lat., 124°26.80′ W. long.;
(78) 42°13.67′ N. lat., 124°26.25′ W. long.;
(79) 42°10.90′ N. lat., 124°24.57′ W. long.;
(80) 42°07.04′ N. lat., 124°23.35′ W. long.;
(81) 42°02.16′ N. lat., 124°22.59′ W. long.;
(82) 42°00.00′ N. lat., 124°21.81′ W. long.;
(83) 41°55.75′ N. lat., 124°20.72′ W. long.;
(84) 41°50.93′ N. lat., 124°23.76′ W. long.;
(85) 41°42.53′ N. lat., 124°16.47′ W. long.;
(86) 41°37.20′ N. lat., 124°17.05′ W. long.;
(87) 41°24.58′ N. lat., 124°10.51′ W. long.;
(88) 41°20.73′ N. lat., 124°11.73′ W. long.;
(89) 41°17.59′ N. lat., 124°10.66′ W. long.;
(90) 41°04.54′ N. lat., 124°14.47′ W. long.;
(91) 40°54.26′ N. lat., 124°13.90′ W. long.;
(92) 40°40.31′ N. lat., 124°26.24′ W. long.;
(93) 40°34.00′ N. lat., 124°27.39′ W. long.;
(94) 40°30.00′ N. lat., 124°31.32′ W. long.;
(95) 40°28.89′ N. lat., 124°32.43′ W. long.;
(96) 40°24.77′ N. lat., 124°29.51′ W. long.;
(97) 40°22.47′ N. lat., 124°24.12′ W. long.;
(98) 40°19.73′ N. lat., 124°23.59′ W. long.;
(99) 40°18.64′ N. lat., 124°21.89′ W. long.;
(100) 40°17.67′ N. lat., 124°23.07′ W. long.;
(101) 40°15.58′ N. lat., 124°23.61′ W. long.;
(102) 40°13.42′ N. lat., 124°22.94′ W. long.; and
(103) 40°10.00′ N. lat., 124°16.65′ W. long.

(3) Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western, offshore boundary approximating 100-fm (183-m). North of 40°10′ N. lat., the western boundary for the RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;

(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.80′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.67′ N. lat., 125°13.70′ W. long.;
(22) 48°19.70′ N. lat., 125°11.13′ W. long.;
(23) 48°22.95′ N. lat., 125°10.79′ W. long.;
(24) 48°21.61′ N. lat., 125°02.54′ W. long.;
(25) 48°23.00′ N. lat., 124°49.34′ W. long.;
(26) 48°17.00′ N. lat., 124°56.50′ W. long.;
(27) 48°06.00′ N. lat., 125°00.00′ W. long.;
(28) 48°04.62′ N. lat., 125°01.73′ W. long.;
(29) 48°04.84′ N. lat., 125°04.03′ W. long.;
(30) 48°06.41′ N. lat., 125°06.51′ W. long.;
(31) 48°06.00′ N. lat., 125°08.00′ W. long.;
(32) 48°07.08′ N. lat., 125°09.34′ W. long.;
(33) 48°07.28′ N. lat., 125°11.14′ W. long.;
(34) 48°03.45′ N. lat., 125°16.66′ W. long.;
(35) 47°59.50′ N. lat., 125°18.88′ W. long.;
(36) 47°58.68′ N. lat., 125°16.19′ W. long.;
(37) 47°56.62′ N. lat., 125°13.50′ W. long.;
(38) 47°53.71′ N. lat., 125°11.96′ W. long.;
(39) 47°51.70′ N. lat., 125°09.38′ W. long.;
(40) 47°49.95′ N. lat., 125°06.07′ W. long.;
(41) 47°49.00′ N. lat., 125°03.00′ W. long.;
(42) 47°46.95′ N. lat., 125°04.00′ W. long.;
(43) 47°46.58′ N. lat., 125°03.15′ W. long.;
(44) 47°44.07′ N. lat., 125°04.28′ W. long.;
(45) 47°43.32′ N. lat., 125°04.41′ W. long.;
(46) 47°40.95′ N. lat., 125°04.14′ W. long.;
(47) 47°39.58′ N. lat., 125°04.97′ W. long.;
(48) 47°36.23′ N. lat., 125°02.77′ W. long.;
(49) 47°34.28′ N. lat., 124°58.66′ W. long.;
(50) 47°32.17′ N. lat., 124°57.77′ W. long.;
(51) 47°30.27′ N. lat., 124°56.16′ W. long.;
(52) 47°30.60′ N. lat., 124°54.80′ W. long.;
(53) 47°29.26′ N. lat., 124°52.21′ W. long.;
(54) 47°28.21′ N. lat., 124°50.65′ W. long.;
(55) 47°27.38′ N. lat., 124°49.34′ W. long.;
(56) 47°25.61′ N. lat., 124°48.26′ W. long.;
(57) 47°23.54′ N. lat., 124°46.42′ W. long.;
(58) 47°20.64′ N. lat., 124°45.91′ W. long.;
(59) 47°17.99′ N. lat., 124°45.59′ W. long.;
(60) 47°18.20′ N. lat., 124°49.12′ W. long.;
(61) 47°15.01′ N. lat., 124°51.09′ W. long.;
(62) 47°12.61′ N. lat., 124°54.89′ W. long.;
(63) 47°08.22′ N. lat., 124°56.53′ W. long.;
(64) 47°08.50′ N. lat., 124°57.74′ W. long.;
(65) 47°01.92′ N. lat., 124°54.95′ W. long.;
(66) 47°01.14′ N. lat., 124°59.35′ W. long.;
(67) 46°58.48′ N. lat., 124°57.81′ W. long.;
(68) 46°56.79′ N. lat., 124°56.03′ W. long.;
(69) 46°58.01′ N. lat., 124°55.09′ W. long.;
(70) 46°55.07′ N. lat., 124°54.14′ W. long.;
(71) 46°59.60′ N. lat., 124°49.79′ W. long.;
(72) 46°58.72′ N. lat., 124°48.78′ W. long.;
(73) 46°54.45′ N. lat., 124°48.36′ W. long.;
(74) 46°53.99′ N. lat., 124°49.95′ W. long.;
(75) 46°54.38′ N. lat., 124°52.73′ W. long.;
(76) 46°52.38′ N. lat., 124°52.02′ W. long.;
(77) 46°48.93′ N. lat., 124°49.17′ W. long.;
(78) 46°41.50′ N. lat., 124°43.00′ W. long.;
(79) 46°34.50′ N. lat., 124°28.50′ W. long.;
(80) 46°29.00′ N. lat., 124°30.00′ W. long.;
(81) 46°20.00′ N. lat., 124°36.50′ W. long.;
(82) 46°18.00′ N. lat., 124°38.00′ W. long.;
(83) 46°17.52′ N. lat., 124°35.35′ W. long.;
(84) 46°17.00′ N. lat., 124°22.50′ W. long.;
(85) 46°16.00′ N. lat., 124°20.62′ W. long.;
(86) 46°13.52′ N. lat., 124°25.49′ W. long.;
(87) 46°12.17′ N. lat., 124°30.75′ W. long.;
(88) 46°10.63′ N. lat., 124°37.95′ W. long.;
(89) 46°09.29′ N. lat., 124°39.01′ W. long.;
(90) 46°02.40′ N. lat., 124°40.37′ W. long.;
(91) 45°56.45′ N. lat., 124°38.00′ W. long.;
(92) 45°51.92′ N. lat., 124°38.49′ W. long.;
(93) 45°47.19′ N. lat., 124°35.58′ W. long.;
(94) 45°46.41′ N. lat., 124°32.36′ W. long.;
(95) 45°46.00′ N. lat., 124°32.10′ W. long.;
(96) 45°41.75′ N. lat., 124°28.12′ W. long.;
(97) 45°36.96′ N. lat., 124°24.48′ W. long.;
(98) 45°31.84′ N. lat., 124°22.04′ W. long.;
(99) 45°27.10′ N. lat., 124°21.74′ W. long.;
(100) 45°20.25′ N. lat., 124°18.54′ W. long.;
(101) 45°18.14′ N. lat., 124°17.59′ W. long.;
(102) 45°11.08′ N. lat., 124°16.97′ W. long.;
(103) 45°04.38′ N. lat., 124°18.36′ W. long.;
(104) 45°03.83′ N. lat., 124°18.60′ W. long.;
(105) 44°58.05′ N. lat., 124°21.58′ W. long.;
(106) 44°47.67′ N. lat., 124°31.41′ W. long.;

(107) 44°44.55′ N. lat., 124°33.58′ W. long.;
(108) 44°39.88′ N. lat., 124°35.01′ W. long.;
(109) 44°32.90′ N. lat., 124°36.81′ W. long.;
(110) 44°30.33′ N. lat., 124°38.56′ W. long.;
(111) 44°30.04′ N. lat., 124°42.31′ W. long.;
(112) 44°26.84′ N. lat., 124°44.91′ W. long.;
(113) 44°17.99′ N. lat., 124°51.03′ W. long.;
(114) 44°13.68′ N. lat., 124°56.38′ W. long.;
(115) 44°08.30′ N. lat., 124°55.99′ W. long.;
(116) 43°56.67′ N. lat., 124°55.45′ W. long.;
(117) 43°56.47′ N. lat., 124°34.61′ W. long.;
(118) 43°42.73′ N. lat., 124°32.41′ W. long.;
(119) 43°30.93′ N. lat., 124°34.43′ W. long.;
(120) 43°20.83′ N. lat., 124°39.39′ W. long.;
(121) 43°17.45′ N. lat., 124°41.16′ W. long.;
(122) 43°07.04′ N. lat., 124°41.25′ W. long.;
(123) 43°03.45′ N. lat., 124°44.36′ W. long.;
(124) 43°03.90′ N. lat., 124°50.81′ W. long.;
(125) 42°55.70′ N. lat., 124°52.79′ W. long.;
(126) 42°54.12′ N. lat., 124°47.36′ W. long.;
(127) 42°50.00′ N. lat., 124°45.33′ W. long.;
(128) 42°44.00′ N. lat., 124°42.38′ W. long.;
(129) 42°40.50′ N. lat., 124°41.71′ W. long.;
(130) 42°38.23′ N. lat., 124°41.25′ W. long.;
(131) 42°33.03′ N. lat., 124°42.38′ W. long.;
(132) 42°31.89′ N. lat., 124°42.04′ W. long.;
(133) 42°30.09′ N. lat., 124°42.67′ W. long.;
(134) 42°28.28′ N. lat., 124°47.08′ W. long.;
(135) 42°25.22′ N. lat., 124°43.51′ W. long.;
(136) 42°19.23′ N. lat., 124°37.92′ W. long.;
(137) 42°16.29′ N. lat., 124°36.11′ W. long.;
(138) 42°13.67′ N. lat., 124°35.81′ W. long.;
(139) 42°05.66′ N. lat., 124°34.92′ W. long.;
(140) 42°00.00′ N. lat., 124°35.27′ W. long.;
(141) 41°47.04′ N. lat., 124°27.64′ W. long.;
(142) 41°32.92′ N. lat., 124°28.79′ W. long.;
(143) 41°24.17′ N. lat., 124°28.46′ W. long.;
(144) 41°10.12′ N. lat., 124°20.50′ W. long.;
(145) 40°51.41′ N. lat., 124°24.38′ W. long.;
(146) 40°43.71′ N. lat., 124°29.89′ W. long.;
(147) 40°40.14′ N. lat., 124°30.90′ W. long.;
(148) 40°37.35′ N. lat., 124°29.05′ W. long.;
(149) 40°34.76′ N. lat., 124°29.82′ W. long.;
(150) 40°36.78′ N. lat., 124°37.06′ W. long.;
(151) 40°32.44′ N. lat., 124°39.58′ W. long.;
(152) 40°30.00′ N. lat., 124°38.13′ W. long.;
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(154) 40°23.30′ N. lat., 124°31.60′ W. long.;
(155) 40°23.52′ N. lat., 124°28.78′ W. long.;
(156) 40°22.43′ N. lat., 124°25.00′ W. long.;
(157) 40°21.72′ N. lat., 124°24.94′ W. long.;
(158) 40°21.87′ N. lat., 124°27.96′ W. long.;
(159) 40°21.40′ N. lat., 124°28.74′ W. long.;
(160) 40°19.68′ N. lat., 124°28.49′ W. long.;
(161) 40°17.73′ N. lat., 124°25.43′ W. long.;
(162) 40°18.37′ N. lat., 124°23.35′ W. long.;
(163) 40°15.75′ N. lat., 124°26.05′ W. long.;
(164) 40°16.75′ N. lat., 124°33.71′ W. long.;
(165) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(166) 40°10.00′ N. lat., 124°21.12′ W. long.;

NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed domestic fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 18–21, 2005, in Victoria, B.C. NMFS requests comments on the proposed changes to the Plan and domestic fishing regulations after the annual meeting but before 5pm local time on March 16, 2005, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed changes. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for the Area 2A Pacific halibut fisheries concurrent with the IPHC regulations for the 2005 Pacific halibut fisheries.

Classification

NMFS has prepared an EA/RIR/IRFA and a CE on the proposed changes to the Plan and annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see **ADDRESSES**).

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.0 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance.

The proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would: (1) allow remaining quota from Washington's south coast subarea to be used to accommodate incidental catch in the south coast nearshore fishery; (2) allow quota projected to be unused to be transferred from the Oregon's central coast subarea to another subarea south of Leadbetter Point, WA; (3) revise the season structure for Oregon's all-depth spring and summer sport fisheries; (4) provide more flexibility for Oregon's inseason sport fishery management (triggers for additional fishery openings and bag limits in the all-depth summer fishery); (5) revise the public announcement process for the Oregon all-depth summer sport fishery; (6) revise the Columbia River subarea quota contributions from Oregon/California; (7) remove the minimum length requirement in all subareas south of Leadbetter Point, WA; (8) prohibit retention of all groundfish, except sablefish, in the Columbia River fishery during all days and in the Central Coast

fisheries during ''all-depth'' days; (9) implement a closed area off Oregon's coast; and (10) revise all coordinates from degrees minutes seconds to degrees decimal minutes. These proposed changes to the Plan for each issue are intended to increase protection for overfished groundfish within the recreational halibut fisheries and to allow Oregon anglers easier access to their halibut quota. The flexible inseason management provisions, the fishery election process, and the domestic management measures in Area 2A have essentially not changed since 2004, but are included in the proposed rule to provide opportunity for public notice and comment.

These changes to the Plan and annual domestic Area 2A halibut management measures are authorized under the Pacific Halibut Act and implementing regulations at 50 CFR 300.60–65.

The proposed changes to the Plan will affect charter fishing operations that operate off Oregon. The IPHC issued 138 licenses to the charterboat fleet in 2004, approximately 52 of which were issued to Oregon charterboat operators. Specific data on the economics of halibut charter operations is unavailable. However, in January 2004 the Pacific States Marine Fisheries Commission (PSMFC) reported that there were about 150 charterboat vessels operating in waters off Oregon in 2000. Compared with the 52 IPHC charter licenses issued to Oregon addresses in 2004, this estimate suggests that approximately 35–percent of the Oregon charterboat fleet participates in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. In 2000, small Oregon charterboat vessels had an average annual revenue of about $7,000, an average length of 23.4 feet (7.2 meters), and typically carried six passengers. In 2000, medium Oregon charterboat vessels had an average annual revenue of $85,000, an average length of 41.4 feet and typically carried 19 to 20 passengers. These data confirm that Oregon charterboat vessels qualify as small entities under the Regulatory Flexibility Act.

The proposed changes to the Plan are not expected to result in any significant economic impacts for small entities. The proposed sport management measures for 2005 implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The EA/RIR/IRFA for this action reviewed alternatives including no action, adopting a closed area on Stonewall Bank, prohibiting groundfish retention in the Columbia River and Oregon's Central coast areas, and removing the minimum length requirement. The preferred alternatives were to adopt both a closed area on Stonewall Bank and prohibit groundfish retention in the Columbia River and Oregon's Central coast areas as well as removing the minimum length requirement. There were no alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest. These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations.

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, the Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act reserves a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes that the 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

Authority: 16 U.S.C. 773–773k

Dated: February 1, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–2282 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 24
Monday, February 7, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 1, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child Nutrition Database.

OMB Control Number: 0584–0494.

Summary of Collection: The Child Nutrition (CN) Database is a necessary component in implementation of USDA's Food and Nutrition Service (FNS) National School Lunch Program (NSLP) and School Breakfast (SBP): School Meals Initiative for Healthy Children final rule published in the June 13, 1995 **Federal Register**, Volume 60, No. 113. The overriding purpose in NSLP and SBP initiatives is to serve more nutritious and healthful meals to school children. FNS updated the regulations which established the specific nutrition criteria for reimbursable school meals incorporating the Recommended Dietary Allowances (RDA) issued by the Food and Nutrition Board, Commission on Life Sciences, National Research Council for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines. FNS will collect information using a database that contains information on the nutritional composition.

Need and Use of the Information: FNS will collect information on (1) USDA commodities; (2) USDA Nutrient Database for Standard Reference food items which are used in the SBP and NSLP; (3) quantity recipes for school food service developed by USDA; and (4) brand name commercially processed foods. The information gathered for the CN Database is required to be used in software program approved by USDA for use in meeting the nutrient standards and nutrition goals of the Child Nutrition Program meal pattern. Both the States and program will use the information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 75.

Frequency of Responses: Report: Other (as needed).

Total Burden Hours: 2,300.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2277 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 2, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Mangement and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: 7 CFR 340; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering.

OMB Control Number: 0579–0085.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction into, and dissemination and establishment of plant pests in the United States. The statutory requirements for the information collection activity are found in the Plant Pest Act (PPA). The regulations in 7 CFR part 340 implement the provisions of the PPA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction. APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS will collect the information through a notification procedure or a permit requirement to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present a risk of plant pest introduction. The information collected through the petition process is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment if grown in the absence of regulations by APHIS. The information is also provided to State departments of agriculture for review, and made available to the public and private sectors on the Internet to ensure that all sectors are kept informed concerning any potential risks posed through the use of genetic engineering technology.

Description of Respondents: Business or other for profit; Not-for-profit intstitutions; State, Local or Tribal Government.

Number of Respondents: 97.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,676.

Animal and Plant Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, as well as the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Quarantine Act and the Federal Pest Act authorize the Department to carry out this mission. The regulations in 7 CFR part 353 allow non-government facilities (such as commercial laboratories and private inspection services) to be accredited by the Animal and Plant Health Inspection Service (APHIS) to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. APHIS provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name and full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If the activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: Business or other for profit.

Number of Respondents: 15.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 315.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2278 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, February 21, 2005. The meeting will include routine business, the review and recommendation for implementation of submitted project proposals, and presentations of large project concept papers.

DATES: The meeting will be held February 21, 2005, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 31, 2005.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 05–2274 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Butte Highlands Mill Site, Silver Bow County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with the Butte Highlands Mining Company (the Settling Party) concerning the Butte Highlands Mill Site, Silver Bow County, Montana (''the Site''). Under the settlement, the Settling Party has agreed to pay the Forest Service $100,000 to reimburse it for a portion of the response costs incurred at the Site. Pursuant to section 122(h)(1) of CERCLA, 42, U.S.C. 9622(h)(1), the USDA Forest Service Northern Region has agreed to forego the collection of substantial remaining past response costs at the Site from the Settling Party because of the company's inability to pay any additional amount. The settlement includes a covenant not to sue the Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or consideration which indicate that the

settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Butte Ranger District, 1820 Meadowlark Lane, Butt, Montana, 59701 and at the offices of the USDA Forest Service Northern Region, Federal Building, Missoula, Montana, 59807.

DATES: Comments must be submitted on or before March 9, 2005.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed settlement are available for public inspection at the Butte Ranger District, 1820 Meadowlark Lane, Butte, Montana, 59701 and at the office of the USDA Forest Service Northern Region, Federal Building, Missoula, Montana, 59807. For technical information or a copy of the proposed settlement, contact Bob Wintergerst at the Northern Regional Office at 406–329–3036. For legal information or a copy of the proposed settlement, contact Michael R. Hope with USDA's Office of the General Counsel, (303) 275–5545. Comments should reference the Butte Highlands Mill Site, Silver Bow County, Montana, and should be addressed to Michael R. Hope, USDA Office of the General Counsel, PO Box 25005, Denver, CO 80225–0005.

Dated: February 1, 2005.

Kathleen McAllister,

Deputy Regional Forester.

[FR Doc. 05–2249 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. c10, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

FOR FURTHER INFORMATION CONTACT: Carol House, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW., Room 4117 South Building, Washington, DC 20250–2000. Telephone: (202) 720–4333, Fax: (202) 720–9013, or e-mail: *chouse@nass.usda.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled a meeting on February 22–23, 2005. During this time the Advisory Committee will discuss topics including Census of Agriculture, NASS Special Activities, Publications, Accomplishments for 2004, Subcommittee reports, and Agriculture Finance.

Dates and Locations: The Committee meeting will be held 1 p.m.–4:30 p.m. on Tuesday, February 22, and 8 a.m.–4:30 p.m. on Wednesday, February 23, with an opportunity for public questions and comments at 3:30 p.m. on February 23, the Marriott Crystal City at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

Type of Meeting: Open to the public.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Dated January 25, 2005, at Washington, DC.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 05–2279 Filed 2–4–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Pakland PME Corporation and Humayun Khan; Order Temporarily Denying Export Privileges

In the Matter of: Pakland PME Corporation, Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, and, Humayun Khan, Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, Respondents.

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying the export privileges under the EAR of Pakland PME Corporation (''Pakland''), Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, and Humayun Khan (''Khan''), Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan (hereinafter collectively referred to as the ''Respondents'').

In its request, BIS has presented evidence that shows that Pakland and Khan, the owner and operator of Pakland, conspired with others, known and unknown, to cause items subject o the EAR to be illegally exported to Pakistan, that they caused and attempted to cause exports of items controlled for nuclear non-proliferation reasons to Pakistan with knowledge that violations of the EAR would occur, and that they took actions intended to evade the EAR.

Specifically, the evidence shows that, from July 2003 through January 2004, Respondents conspired to have triggered spark gaps [2] and oscilloscopes [3] items included on the Commerce Control List and controlled for nuclear non-proliferation reasons, exported from the United States to Pakistan without the required BIS export licenses. The evidence also shows that Respondents developed and implemented a scheme to avoid the requirements of the EAR by causing these items exported through South Africa to Pakistan. More specifically, pursuant to direction from Respondents, on or about August 1, 2003, a purchase order for 200 triggered spark gaps was submitted to a U.S.

[1] The EAR, which are currently codified at 15 CFR Parts 730–774 (2004), are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420—) (2000) (the ''Act''). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 ((3 CFR, 2000 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp 783 (2002)), as extended by the Notice of August 6, 2004, (69 **Federal Register** 48763 (August 10, 2004)), continued the Regulations in effect under the IEEPA.

[2] Triggered spark gaps are electronic switches that deliver a very high voltage with a very short delay once switched. Triggered spark gaps are used in medical lithotripters to disintegrate gallstones and kidney stones and are also used as triggers for nuclear weapons.

[3] Oscilloscopes are used for testing and assembly of electronic equipment, and can be used in the development of nuclear weapons. The oscilloscopes in question are controlled under ECCN 3A292 and require a license for export to Pakistan for nuclear non-proliferation reasons.

manufacturer by a company in New Jersey. The purchase order stated that end-user of the triggered spark gaps was a hospital in the South Africa. The manufacturer of the triggered sparks gaps confirmed that a standard or normal size order of triggered spark gaps for a hospital would be five to six. On or about September 29, 2003, the U.S. manufacturer made the first shipment under the purchase order to the New Jersey company. On or about October 3, 2003, the New Jersey then shipped approximately 66 triggered spark gaps from the United States to South Africa. On or about October 19, 2003, the triggered spark gaps were shipped from South Africa to Pakistan (the intended destination of the triggered spark gaps) without a BIS license by persons who were conspirators with the Respondents.

Additionally, in 2003, Respondents were involved in at least two unauthorized export of oscilloscopes from the United States to Pakistan through South Africa, including one export to a Pakistani corporation on BIS's Entity List, the Al-Technique Corporation of Pakistan, Ltd.

I find the evidence presented by BIS demonstrates that the Respondents have conspired to violate the EAR, that such violations have been deliberate and covert, and that there is a strong likelihood of future violations, particularly given the nature of the transactions and the elaborate steps that have been taken by Respondents to avoid detection by the U.S. Government while knowing that their actions were in violation of the EAR. As such, a Temporary Denial Order (''TDO'') is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Pakland and Khan as Respondents is necessary, in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is therefore ordered:

First, that the Respondents, Pakland PME Corporation, Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, and Humayun Khan, Unit 7 & 8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan (collectively the ''Denied Persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate acquisition or attempted acquisition from the Denied Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons order in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents shall be published in the **Federal Register**.

This Order is effective upon date of publication in the **Federal Register** and shall remain in effect for 180 days.

Entered this 31st day of January, 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–2240 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Wen Enterprises, Ning Wen, Hailin Lin, and Beijung Rich Linscience Electronics Company; Order Temporarily Denying Export Privileges

In the Matters of: Wen Enterprises, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Ning Wen, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Hailin Lin, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing,

People's Republic of China 100086; Respondents.

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying export privileges of Wen Enterprises (''WE''), 402 Wild Oak Drive, Manitowoc, WI 54220; Ning Wen (''Wen''), 402 Wild Oak Drive, Manitowoc, WI 54220; Hailin Lin (''Lin''), 402 Wild Oak Drive, Manitowoc, WI 54220; and Beijing Rich Linscience Electronics Company (''BRLE''), No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 (hereinafter collectively referred to as the ''Respondents'').

BIS has presented evidence that shows that Respondents have conspired together and with others, known and unknown, to illegally export items subject to the EAR, including national security controlled electronic components, to the People's Republic of China (''PRC'') without the Department of Commerce necessary licenses. Specifically, the evidence shows that WE's sole business is exporting electronic components and semiconductor chips to BRLE in the PRC. WE has two employees: (1) Wen, the owner of WE, and (2) Lin, Wen's wife who runs WE. WE does not sell domestically and does not sell to any customer other than BRLE. The evidence shows that on more than 30 occasions during the period of June 7, 2002 through September 17, 2004, WE exported national security controlled electronic components to BRLE in the PRC with knowledge that export licenses were required for the items and that those licenses were neither applied for nor received. The evidence also shows that BRLE caused such exports to happen with knowledge that a violation of the EAR would subsequently occur. BRLE is a distributor and not the end-user of these electronic components.

I find the evidence presented by BIS demonstrates that the Respondents conspired to do acts that violate the EAR and did in fact commit numerous violations of the EAR by participating in the unlicensed export of national security controlled items to the PRC. I further find that such violations have been significant, deliberate and covert, and are likely to occur again, especially given the nature of the structure and relationships of the Respondents. As such, a Temporary Denial Order (''TDO'') is needed to give notice to persons in the United States and abroad that they should cease dealing with the Respondents in export transactions involving commodities, software or technology that are subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming WE, Wen, Lin and BRLE as Respondents is necessary and in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is therefore ordered:

First, that the Respondents, Wen Enterprises, 402 Wild Oak Drive, Manitowoc, WI 54220; Ning Wen, 402 Wild Oak Drive, Manitowoc, WI 54220; Hailin Lin, 402 Wild Oak Drive, Manitowoc, WI 54220; and Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, and their successors and assigns and when or for acting on behalf of any of the Respondents, their officers, agents or representatives, (''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person is such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the Ear, BIS may seek renewal of this Order by filing a written request not later than 20 days

[1] The EAR, which are currently codified at 15 CFR Parts 730–774 (2004), are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (2000) (the ''Act''). The EAA was in effect from November 13, 2000 through August 20, 2001 but lapsed on August 21, 2001. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763, August 10, 2004), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**

This Order is effective immediately and shall remain in effect for 180 days.

Entered this 31st day of January, 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–2239 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on February 23 and 24, 2005, 9 a.m., at the Space and Naval Warfare Systems Center (SPAWAR), Building 33, Cloud Room, 53560 Hull Street, San Diego, California, 92152. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

February 23:

Public Session

1. Opening remarks and introductions.
2. Comments or presentations by the public.
3. Presentation on Excimer Lasers and EUV.
4. Presentation on Microwave Semiconductor Technology.
5. Overview of the STI Cell processor.

February 23–24:

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 31, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)1 and 10(a)(3).

The remaining portions of the meeting will be open to the public. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 2, 2005.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 05–2246 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security Transportation and Related Equipment

Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on March 17, 2005, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street Between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks and introductions.
2. Update on country-specific policies.
3. Update on regulations and procedures.
4. Review of Wassenaar Arrangement and Technical Working Group issues.
5. Review of Missile Technology Control Regime issues.
6. Update on Commerce Control List issues.
7. Update on status of U.S. Munitions List review.
8. Presentation of papers, proposals and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials to Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: February 2, 2005.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 05–2247 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 7, 2005.

SUMMARY: In December 2004, the Department of Commerce (''the Department'') received a request to conduct a new shipper review of the antidumping duty order on honey from the People's Republic of China (''PRC''). We have determined that this request meets the statutory and regulatory requirements for the initiation of a new shipper review.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375 or Kristina Boughton at (202) 482–8173; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Kunshan Xin'an Trade Co., Ltd. (''Xinan'') in accordance with 19

CFR 351.214 (c), for a new shipper review of the antidumping duty order on honey from the PRC, which has a December annual anniversary month. Xinan identified itself as the producer and exporter of honey. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Xinan certified that it did not export honey to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported honey to the United States during the POI. Furthermore, Xinan has also certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Xinan submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.

The Department conducted Customs database queries to confirm that Xinan's shipment had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection (''CBP''). In addition, the Department confirmed the existence of Xinan and its U.S. affiliate, Xin'an USA, Inc., which also served as the importer of record.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating a new shipper review for Xinan. See Memorandum to the File through James C. Doyle, ''New Shipper Review Initiation Checklist,'' dated January 31, 2005. We intend to issue the preliminary results of this review not later than 180 days after the date on which this review was initiated, and the final results of this review within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (''POR'') for a new shipper review, initiated in the month immediately following the anniversary month, will be the 12–month period immediately preceding the anniversary month. Therefore, the POR for the new shipper review of Xinan is December 1, 2003 through November 30, 2004.

It is the Department's usual practice in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Xinan, including a separate rates section. The review will proceed if the responses provide sufficient indication that Xinan is not subject to either *de jure* or *de facto* government control with respect to their exports of honey. However, if Xinan does not demonstrate its eligibility for a separate rate, then it will be deemed not separate from other companies that exported during the POI and the new shipper review will be rescinded.

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Xinan. Specifically, since Xinan has stated that it is both the producer and exporter of the subject merchandise for the sale under review, we will instruct CBP to limit the bonding option only to entries of merchandise that were both exported and produced by Xinan. Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: January 31, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–480 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Stainless Steel Wire Rod from Sweden: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or P. Lee Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0588 or (202) 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2004, the Department of Commerce (Department) published in the **Federal Register** (69 FR 53407) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on stainless steel wire rod from Sweden for the period September 1, 2003, through August 31, 2004. On September 30, 2004, the petitioner[1] requested an administrative review of the antidumping duty order for the following company: Fagersta Stainless AB (Fagersta). On October 22, 2004, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel wire rod from Sweden with respect to this company. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 62022. On January 12, 2005, the petitioner timely withdrew its request for review with respect to Fagersta.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner withdrew its request for review of Fagersta within the 90-day period. Therefore, because the petitioner was the only party to request the administrative review of this company, we are rescinding this review of the antidumping duty order on stainless steel wire rod from Sweden.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 1, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–479 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioner is Carpenter Technology Corporation.

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–002.

Applicant: Cornell University, 123 Day Hall, Ithaca, NY 14853.

Instrument: KB Mirror System.

Manufacturer: Kohzu Precision Co., Ltd., Japan.

Intended Use: The instrument is intended to be used by a group of universities to study the molecular structure of macro-molecules of importance in the life sciences including proteins, viruses, enzymes and other related entities by the scattering of monoenergetic x-rays from single crystals of these materials utilizing the intense beams of x-rays provided by the Advanced Photon Source at Argonne National Laboratory to determine the molecular structure of these entities. The mirror system is needed to focus the intense x-ray beam onto sub-millimeter sized crystals.

Application accepted by Commissioner of Customs: January 24, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–478 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105F]

Proposed Information Collection; Comment Request; Permits for Incidental Taking of Endangered or Threatened Species

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Susan Pultz, F/PR3Room 13661, 1315 East-West Highway, Silver Spring MD 20910–3282 (phone 301–713–1401, ext. 116).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR part 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (l) applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, NMFS recognizes certain exceptions to that prohibition, including habitat restoration actions taken in accord with approved state watershed action plans. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

II. Method of Collection

Currently, most information is collected on paper, but in some instances, there is electronic access and capability.

III. Data

OMB Number: 0648–0230.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; and state, local, or tribal government.

Estimated Number of Respondents: 11.

Estimated Time Per Response: 80 hours for a permit application (including Habitat Conservation Plans); 30 minutes for an application for a Certificate of Inclusion; 8 hours for a permit report; and 10 hours for a watershed plan.

Estimated Total Annual Burden Hours: 880.

Estimated Total Annual Cost to Public: $15,840.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2283 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105I]

Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Management and Budget, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2396).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates a direct loan program, Fisheries Finance Program (FFP), to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas (IFQ). The application information is required to determine eligibility pursuant to 50 CFR Part 253, and to determine the type and amount of assistance requested by the applicant. An annual financial statement is required to collect information necessary to monitor the financial status of the loan.

II. Method of Collection

Forms submitted in paper format.

III. Data

OMB Number: 0648–0012.

Form Number: NOAA Form 88-1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Response: 8 hours for a traditional FFP application; 4 hours for an IFQ loan application; and 8 hours for an annual financial statement.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annual Cost to Public: $5,375.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2284 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105J]

Proposed Information Collection; Comment Request; Coastal Impact Assistance Program: Project Review Checklist

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John R. King, N/ORM3, Room 11357, 1305 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–3155, ext. 188).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coastal Impact Assistance Program (CIAP) recognizes that impacts from Outer Continental Shelf oil and gas activities fall disproportionately on coastal states and localities nearest to where the activities occur. The program provides funds to seven states and 147 local governments to conduct a variety of related projects, including construction and land acquisition. NOAA must review the projects in accordance with the CIAP legislation before disbursing funds. To expedite review, NOAA developed the CIAP Project Checklist for the construction and land acquisition projects. The Checklist, whose use is voluntary, requests applicants to provide project information to allow NOAA to determine their eligibility under the CIAP as well as eligibility under other relevant statutes (NEPA, etc.).

II. Method of Collection

Forms submitted in paper or electronic format.

III. Data

OMB Number: 0648–0440.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 5 hours.

Estimated Total Annual Burden Hours: 175.

Estimated Total Annual Cost to Public: $175.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2285 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105K]

Proposed Information Collection; Comment Request; Seafood Inspection and Certification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rita Creitz, F/SI, Room 10840, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2355, ext. 218).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970.

The regulations for the Program are contained in 50 CFR Part 260. The Program offers inspection grading and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. Qualified participants are permitted to use the Program's official quality grade marks on their products to facilitate trade of fishery products.

The participants in the inspection program are requested to submit specific information pertaining to the type of inspection services requested [Sec. 260.15]. In all cases, applicants provide information regarding the type of products to be inspected, the quantity, and location of the product. There are also application requirements if there is an appeal of previous inspection results [Sec. 260.36]. Participants requesting regular inspection services on a contractual basis also submit a contract [Sec. 260.96]. The participants interested in using official grade marks are required to submit product labels and specifications for review and approval to ensure compliance with mandatory labeling regulations established by the U.S. Food and Drug Administration as well as proper use of the Program's marks [Sec. 260.97 (12) and (13)].

Current regulations state requirements for approval of drawings and specifications prior to approval of facilities [Sec. 260.96 (b) and (c)]. There are no respondents under this section. The Program will amend this part of the regulations in a future action.

In July 1992, NMFS announced new inspection services, which were fully based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP). The information collection requirements fall under Sec. 260.15 of the regulations. These guidelines required that a facility's quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. The HACCP requires continuing monitoring and recordkeeping by the facility's personnel.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based program is not a self-certification program. It relies on unannounced system audits by NMFS. The frequency of audits is determined by the ability of the firm to monitor its operation. By means of these audits, NMFS reviews the records produced through the Program participant's self-monitoring. The audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential consumer risk associated with the product and/or the firm's history of compliance with the Program's criteria.

The information collected is used to determine a participant's compliance with the program. The reported information, a HACCP plan, is needed only once. Other information is collected and kept by the participant as part of its routine monitoring activities. NMFS audits the participant's records on unannounced frequencies to further determine compliance.

II. Method of Collection

Information will be obtained via telephone, fax, hard-copy submission, or audit conducted by NMFS personnel.

III. Data

OMB Number: 0648–0266.

Form Number: NOAA Forms 89-800, 89-814, and 89-819.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,082.

Estimated Time Per Response: 5 minutes for an application of inspection services; 5 minutes for an application for an appeal; 5 minutes for submitting a contract; 30 minutes to submit a label and specification; 105 hours for a Hazard Analysis Critical Control Point (HACCP) plan; and 80 hours for HACCP monitoring and recordkeeping.

Estimated Total Annual Burden Hours: 13,065.

Estimated Total Annual Cost to Public: $3,579.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2286 Filed 2–4–05; 8:45am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 020105L]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Steller Sea Lion Protection Pretest Economic Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 143.

Number of Respondents: 330.

Average Hours Per Response: 30 minutes for mail survey; 6 minutes for phone follow-up.

Needs and Uses: The objective of the pretest is to test a survey instrument that will be used to collect data for measuring the preferences, and economic values, that U.S. residents have for protecting Steller sea lions, a listed species under the Endangered Species Act. These preferences are currently not known, but are needed to improve Steller sea lion management decisions. The pretest consists of conducting a small-scale mail survey of U.S. households that will collect information needed to evaluate the survey instrument and implementation.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2287 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105M]

Proposed Information Collection; Comment Request; Evaluation of the Coastal Services Magazine and the Coastal Connections Newsletter

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Donna McCaskill, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405 (or via the Internet at Donna.Mccaskill@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coastal Services Center (Center) produces two publications for coastal resource managers, the bi-monthly Coastal Services magazine and the bi-monthly Coastal Connections newsletter. This research will be used by the NOAA Coastal Services Center to obtain information from our subscribers to evaluate customer satisfaction, learning, and application regarding the two publications.

II. Method of Collection

A paper survey to subscribers.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Publication subscribers including Federal government; State, Local, or Tribal government staff (e.g., natural resource management agencies); not-for-profit institutions; academia.

Estimated Number of Respondents: 900.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 300 minutes.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2288 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105N]

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Observer Notification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Chris Rilling, National Marine Fisheries Service (NMFS), Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I.Abstract

Under current regulations NMFS may select for observer coverage any fishing trip by a vessel that has a permit for Atlantic Highly Migratory Species (HMS). NMFS notifies vessel owners, in writing, when their vessels have been selected. The owners of those vessels are then required to notify NMFS before commencing any fishing trip for Atlantic HMS. This notification allows NMFS to arrange for observer placements and assignments. The notification may be made by phone, fax, or in writing prior to each trip for which a vessel is selected. A form is provided by NMFS for written responses. It is estimated that it would require approximately two minutes to provide the response. The estimated number of responses exceeds the number of respondents due to multiple trips taken within a particular season.

The vessels are selected randomly from a list of active vessels that have reported landings of targeted species during the previous year. Observers are placed aboard vessels to collect, among other things, information on species caught, catch disposition, gear, effort, and bycatch. The information is used in stock assessments, to estimate rates of bycatch of non-targeted and protected species such as sea turtles, and to improve overall management of the fishery. A Biological Opinion (BiOp) issued on June 1, 2004, under the Endangered Species Act, requires a minimum of eight percent observer coverage in the pelagic longline fishery. The shark bottom longline observer program has set a target of five percent observer coverage in the shark bottom longline fishery. A BiOp issued in October 2003, requires NMFS to maintain or increase this level of observer coverage. Observer coverage for the shark gillnet fishery fluctuates from approximately 50 percent to 100 percent, depending on the time of year. Vessels operating in other HMS fisheries are not observed currently but are subject to observer coverage under the regulations. Burden estimates include a ten percent adjustment upward from current levels to account for future expansion of other fisheries.

II. Method of Collection

Notification can be made by phone, fax, or letter.

III. Data

OMB Number: 0648–0374.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (vessel owners).

Estimated Number of Respondents: 471.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 513.

Estimated Total Annual Cost to Public: $7,780.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2289 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205A]

Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Helen Bass at (301)713–3155, ext. 175 (or via Internet at *helen.bass@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and reports, and they may request revisions to or transfers of licenses.

II. Method of Collection

Paper submissions are used, however applicants are encouraged to submit supporting documentation electronically when feasible.

III. Data

OMB Number: 0648–0145.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 2.
Estimated Time Per Response: 2,000-4,000 hours per application (no applications are expected) and 20 hours per report.
Estimated Total Annual Burden Hours: 40.
Estimated Total Annual Cost to Public: $150.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2290 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205B]

Proposed Information Collection; Comment Request; Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joseph Desfosse, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I.Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.). NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, marlins, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. The information supplied through vessel logbooks also provides the catch and effort data necessary to assess the status of highly migratory species and to evaluate bycatch in each fishery. International stock assessments for tunas, swordfish, marlins, and some species of sharks are conducted and presented to the International Commission for the Conservation of Atlantic Tunas (ICCAT) periodically and provide, in part, the basis for ICCAT management recommendations which become binding on member nations. Domestic stock assessments for most species of sharks are used as the basis of managing these species. Supplementary information on fishing costs and earnings has been collected via this vessel logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with NEPA, Executive Order 12866, the Regulatory Flexibility Act, and other domestic law.

II.Method of Collection

Currently, log books are being completed and submitted in paper form.

III. Data

OMB Number: 0648–0371.
Form Number: NOAA Form 88-191.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations (vessel owners).
Estimated Number of Respondents: 7,635.
Estimated Time Per Response: 10 minutes for cost/earnings summaries attached to logbook reports; 12 minutes for logbook catch reports; and 2 minutes for negative logbook catch reports.
Estimated Total Annual Burden Hours: 30,378.
Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2291 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205C]

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Clark, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under current regulations at 50 CFR part 635.6, fishing vessels permitted for Atlantic Highly Migratory Species (HMS) must display their official vessel numbers on their vessels. Flotation devices attached to certain fishing gear must also be marked with the vessel's number to identify catch that is buoyed. These requirements are necessary for law enforcement and monitoring purposes.Specifically, all vessels owners that hold a valid HMS permit, other than an HMS angling permit, are required to mark their vessels with their vessel identification number. The numbers should be permanently affixed to, or painted on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. Furthermore, fishermen that use longline gear must mark high-flyers and terminal buoys with their vessel identification number. Gillnet fishermen must also mark their terminal buoys, and handgear or harpoon fishermen must mark all buoys attached to their gear with their vessel identification number.

II. Method of Collection

There is no form or information collected under this requirement. Official vessel numbers issued to vessel operators are marked on the vessel and on flotation gear, if applicable.

III. Data

OMB Number: 0648–0373.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (vessel owners); and Individuals or households.

Estimated Number of Respondents: 8,700 vessels for vessel identification marking; and 24,064 permit holders for gear marking.

Estimated Time Per Response: 45 minutes/year to mark a vessel; and 15 minutes/year to mark a float.

Estimated Total Annual Burden Hours: 6,525 hours for vessel identification marking; and 6,877 hours for gear marking.

Estimated Total Annual Cost to Public: $304,500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate the burden (including hours and cost) of the proposed collection of information;) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–2293 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations

governing the fisheries of the Northeastern United States. The EFP may allow for exemptions from the NE multispecies days-at-sea (DAS) effort control program for up to 11 DAS for the purposes of studying the effects of a soft grid species separation trawl. In addition, this EFP would allow exemptions from the Gulf of Maine (GOM) Rolling Closure Areas II, III, and IV.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before February 22, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is DA5–08@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: ''Comments on UNH Soft Grid Gear Modification EFP Proposal.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Soft Grid Gear Modification EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Heather L. Sagar, Fishery Management Specialist, phone 978–281–9341.

SUPPLEMENTARY INFORMATION:

Dr. Pingguo He of the University of New Hampshire Cooperative Extension (UNH) submitted an application for an EFP on May 27, 2004. This EFP was approved and granted for the period November 19, 2004, through April 30, 2005. This is a continuation of a project that was begun in 2002. Due to the time needed to conduct gear modifications and tank flume tests, as well as poor weather conditions, the sea trails were not completed during the 2003–2004 fishing years. This EFP would authorize one commercial vessel to conduct sea trials using a soft grid finfish excluder device. The objective of the research is to test trawl gear designed to separate flatfish from roundfish for the purpose of reducing bycatch of roundfish, particularly cod. The separation device is designed to exploit behavioral differences that exist between these two types of fish.

The proposed gear design consists of a trawl net with a soft panel, or ramp, that would be positioned in front of a double codend. The gear is designed in such a way as to take advantage of the tendency for flatfish to swim towards the ocean bottom after encountering the separation panel and thereby into the lower codend portion of the net. Roundfish, which are not expected to swim towards the sea floor after encountering the panel, are expected to swim into the upper codend portion of the net, which would be left open under normal fishing practices when the vessel is targeting flatfish. However, for the purposes of this experiment, both codends would remain closed in order to quantify separation success of these two types of fish. The net would also utilize visual stimuli fixed forward of the codend to test changes in swimming behavior in roundfish and flatfish in response to the stimuli. Underwater videography would be employed to observe fish behavior and functioning of the experimental selectivity device. The sea trials would be conducted in shallow water (30 to 50 fathoms (55 to 91 m)) off the coasts of New Hampshire, southern Maine, and a small portion of northern Massachusetts. UNH researchers would be aboard the vessel at all times during the experimental work.

In a letter dated January 20, 2005, Dr. He requested that this EFP be extended from April 30, 2005, the previously proposed end date, through July 31, 2005. Because no additional DAS would be exempted from what was allowed under the previously approved 2004 EFP, the at-sea portion of the experiment would last no longer than 11 fishing days from November 19, 2004, through July 31, 2005. Based upon the catch rates from 8 days of fishing during the same period of time in the 2003 fishing year, the following catch is estimated to be harvested under this EFP during the period May 1, through July 31, 2005: Cod 2,846 lb (1,291 kg); witch flounder 1,547 lb (702 kg); American plaice 274 lb (124 kg); white hake 140 lb (64 kg); yellowtail flounder 87 lb (40 kg); winter flounder 50 lb (23 kg); haddock 34 lb (15 kg); and pollock 11 lb (5 kg). All undersized fish would be returned to the sea as quickly as possible. Legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold within the applicable GOM possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report.

Due to an oversight in the **Federal Register** notice announcing the 2004 EFP for this project (69 FR 58153, September 29, 2004), this EFP would also exempt vessels from Rolling Closure Area II during April 2005. Thus, an EFP would be issued to one vessel exempting it from GOM Rolling Closure Areas II, III, and IV and; from the NE multispecies DAS effort control program for any of the 11 DAS remaining from the previous 2004 EFP that was issued. The applicant may request minor modifications to the EFP throughout the year. EFP modifications may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal as not to change the scope or impact the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 2, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–484 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 9 a.m. on Thursday, February 24, 2005 and will conclude no later than 3 p.m. on Friday, February 25, 2005.

ADDRESSES: The meeting will be held at the Four Points By Sheraton New Orleans Airport, 6401 Veterans Memorial Boulevard, Metairie, LA 70003; 504.885.5700.

FOR FURTHER INFORMATION CONTACT: Mr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council will convene its Socioeconomic Panel (SEP) to review ''Draft Amendment 13 for Shrimp'', ''Draft Amendment 18A for Reef Fish'', and ''Draft Amendment 26 for Red Snapper.'' The shrimp amendment considers several issues including the establishment of a moratorium on the

issuance of commercial shrimp vessel permits and the requirement of separate vessel permits for the royal red shrimp fishery. The reef fish amendment reviews effort capacity control measures, enforcement and monitoring issues in the reef fish fishery. The red snapper amendment considers the establishment of an individual fishing quota (IFQ) for the commercial red snapper fishery. In addition, the SEP will discuss potential grouper trip limits and buyback programs.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented to the Council at its meeting on March 7–10, 2005 in Birmingham, Alabama.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815. Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by February 17, 2005.

Dated: February 2, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–483 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold a working meeting which is open to the public.

DATES: The TIQC working meeting will begin Wednesday, February 23, 2005 at 8:30 a.m. and may go into the evening if necessary to complete business for the day. The meeting will reconvene from 8:30 a.m. and continue until business for the day is complete on Thursday, February 24, 2005.

ADDRESSES: The meeting will be held in the Broadway Room at the Residence Inn by Marriott-Portland Downtown, RiverPlace, 2115 SW River Parkway, Portland, OR 97201. Telephone: 503–552–9500

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist), 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQC working meeting is to continue to review results from public scoping, and some preliminary analysis, and refine recommendations to the Council on an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery.

Although nonemergency issues not contained in the TIQC meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during these meetings. TIQC action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: February 1, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–481 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105H]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The 88th meeting of the Western Pacific Fishery Council's (Council) Scientific and Statistical Committee (SSC) will convene February 22–24, 2005, in Honolulu, HI.

DATES: The SSC meeting will be held from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The 88th SSC meeting will be held at the Western Pacific Fishery Management Council Office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; phone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items here. The order in which agenda items will be addressed can change.

Agenda

Tuesday, February 22, 2005, 8:30 a.m.

1. Introductions

2. Approval of Draft Agenda and Assignment of Rapporteurs

3. Approval of the Minutes of the 87th SSC Meeting

4. Ecosystem and Habitat

A. Northwestern Hawaiian Islands (NWHI) Sanctuary

1. Background Information and Alternatives

2. Report on Public Hearings

B. NWHI Science Symposium Report

C. MPA Objectives and Criteria Draft Document

D. Ecosystem Workshop Agenda

E. Essential Fish Habitat Guidance Revisions

F. Coral Reef Plan Team Recommendations

G. Public Comment

H. Discussion and Recommendations

3. Insular Fisheries

A. Initial Action on Commonwealth of the Northern Mariana Islands Bottomfish Management

B. Update on Black Coral Research

C. Public Comment

D. Discussion and Recommendations

Wednesday, February 23, 2005, 8:30 a.m.

4. Pelagics Fisheries

A. Bigeye Overfishing Plan

B. Joint Pacific Council and Western Pacific Council Meeting

C. American Samoa & Hawaii Longline Fisheries 2004 Fourth Quarter Reports

D. International Issues

1. 7th Preparatory Conference & First Meeting of the Western and Central Pacific Fishery Management Commission.

2. Food & Agriculture Organization (FAO) Technical Consultation on Turtles

3. Third International Fishers Forum (IFF3)

E. Plan Team Recommendations

F. Public Comment

G. Discussion and Recommendations

7. Protected Species

A. Sea Turtles

1. 25th Annual Sea Turtle Symposium

2. Results from First Year of Conservation Measures

B. Marine Mammals

C. Petition to list Black Footed Albatross (BFAL) under the Endangered Species Act (ESA)

D. Public Comment

E. Discussion and Recommendations

Thursday, February 24, 2005, 8:30 a.m.

8. Other Business

A. 89th SSC meeting

9. Summary of SSC Recommendations to the Council—Paul Callaghan

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 2, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–482 Filed 2–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Federal Acquisition Regulation; Information Collection; Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning report of shipment. The clearance currently expires on May 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 8, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Streets, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

FOR FURTHER INFORMATION CONTACT Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military and, as required, civilian agency storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Respondents: 250.
Responses Per Respondent: 4.
*Annual Responses:*1,000.
Hours Per Response: .167.
Total Burden Hours: 167.
Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: February 1, 2005

Julia B. Wise

Acting Director,Contract Policy Division.

[FR Doc. 05–2238 Filed 2–4–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for an Environmental Dredging Project on the Mahoning River in Ohio

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: This notice advises the public that pursuant to the National Environmental Policy Act (NEPA) of

1969, as amended, the Pittsburgh District (District), U.S. Army Corps of Engineers, intends to develop a Draft Environmental Impact Statement (EIS).

The Draft EIS will consider Federal actions associated with the District's proposal to restore the aquatic ecosystem of the lower Mahoning River in Ohio through (1) Dredging contaminated sediments lining the river; (2) bioremediating sediments in the bank and river where applicable; (3) capping contaminants in the bank; and (4) removing low-head dams along the river; or a combination of all four actions. The lower Mahoning River's ecosystem has been severely impacted by contamination from industries that once lined the valley and by several low-head dams that disrupt the river's natural hydrology. The proposed project will improve the lower Mahoning River's ecosystem to a level found at a model reach located just upstream of the project area.

ADDRESSES: Submit questions or comments regarding the environmental dredging project to Mr. Curtis N. Meeder, Chief, Planning and Environmental Branch, U.S. Army Corps of Engineers, Mahoning Environmental Dredging Project, 1000 Liberty Ave., Pittsburgh, PA 15222–4186, telephone (412) 395–7228 or e-mail: *lrp.mahdredge@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding this notice can be directed to Mr. Larry Moskovitz, U.S. Army Corps of Engineers, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186, Telephone: (412) 395–7205, e-mail: *lrp.mahdredge@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The District is evaluating alternative strategies to restore, through environmental dredging, 31 miles of the lower Mahoning River that extends from Warren, Ohio to the Pennsylvania-Ohio state line. Through this project reach, the Mahoning River is considered a navigable waterway of the United States. The river sediment was contaminated from the heavy industrial use of the Mahoning River Valley through the early and mid 20th Century. Low head dams were constructed at that time to assure water supplies needed by industry. These dams have significantly altered the natural riverine habitat, and sediments in the river's bottom and banks were contaminated by decades of unregulated industrial waste disposal. The sediment contamination has severely impacted the aquatic life in this river and has led the Ohio Department of Health to issue two advisories against recreation on the Mahoning River from Warren, Ohio to the Pennsylvania state line, one limiting fish consumption due to elevated levels of mercury and polychlorinated biphenols (PCBs) and another advising against coming in contact with sediments due to elevated levels of polyaromatic hydrocarbons (PAHs). At the end of the 20th Century, many of the industrial facilities along the Mahoning River closed down, and the remaining companies improved their wastewater treatment facilities resulting in a marked improvement in river water quality. Despite this improvement, recent studies of the lower Mahoning River's ecosystem [including the Ohio Environmental Protection Agency (OEPA's) 1994 Water Quality Study] suggest that the ecology of the Mahoning River will not be restored unless the contaminated sediments are removed, remediated, or capped and some or all of the dams are removed.

The project is being undertaken pursuant to the authority of Section 312 of the Water Resources Development Act (WRDA) of 1990 (Pub. L. 101–640), as amended by Section 205 of the WRDA of 1996 (Pub. L. 104–303) and Section 224 of the WRDA of 1999 (Pub. L. 106–53). Section 312 provides for the removal (dredging) of contaminated sediments within navigable waters for the purpose of ecosystem restoration and specifically identifies the Mahoning River in Ohio and Pennsylvania, due to the severity of contamination, as one of five rivers in the nation given top priority for removal and remediation of contaminated sediments. The District will prepare a Draft Environmental Impact Statement assessing the environmental impacts of the recommended and alternative plans.

Proposed Action: The Mahoning Environmental Dredging Project is designed to restore the ecosystem of the Mahoning River by removing contaminated sediment and low-head dams throughout a 31-mile stretch of the river (from Warren, Ohio to the Ohio-Pennsylvania border).

The Proposed Action involves removing contaminated sediments from the river utilizing mechanical or hydraulic dredging techniques and disposing of the material in an approved manner. Contaminated sediment located in the banks may be treated through hydraulic dredging, bioremediation, capping, or a combination of these three actions. Low-head dams that are no longer being used for water supply will be considered for removal.

Reasonable Alternatives: The District will evaluate a Future Without Project (No Action) Alternative and Future With Project Alternatives. The exact nature and extent of the alternatives will be determined as part of the preparation of the Draft EIS. To facilitate scoping of the environmental effects of the project, the public may initially base comments upon a combination of possible actions that result in the removal of contaminated sediments from the riverbed and riverbank and the removal of unused low-head dams.

The primary issues to be analyzed in depth during the NEPA process will be the environmental impacts of proposed actions on the Mahoning River and cumulative impacts of this proposed Federal action in conjunction with reasonably foreseeable future actions by others. The analysis will include impacts to biological resources, cultural resources, socioeconomic resources, air quality, noise, and recreation.

In addition to the public notice, a notice will be mailed to each address on the Mahoning Environmental Dredging mailing list. Coordination throughout the project will be maintained with the appropriate local, state, and Federal agencies. Interested parties are encouraged to provide written comments relevant to issues to be addressed in the Draft EIS. The District requests that comments or requests for information be directed to the following study contact: Mr. Curtis N. Meeder, Chief, Planning and Environmental Branch (*see* **ADDRESSES** above).

Curtis N. Meeder,

Chief, Planning and Environmental.

[FR Doc. 05–2265 Filed 2–4–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Overview Information; Early Childhood Educator Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.349A.

Dates:

Applications Available: February 7, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Deadline for Intergovernmental Review: June 21, 2005.

Eligible Applicants: A *partnership* consisting of at least one entity from each of the following categories, as indicated below:

(i) One or more institutions of higher education, or other public or private

entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities.

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations).

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described in paragraphs (i) and (ii) under *Eligible Applicants.*

A partnership may apply for these funds only if one of the partners currently provides professional development for early childhood educators working in programs located in high-need communities with children from low-income families.

Estimated Available Funds: $14,695,000.

Estimated Range of Awards: $2,500,000–$5,000,000.

Estimated Average Size of Awards: $3,750,000.

Estimated Number of Awards: 3–6 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Early Childhood Educator Professional Development (ECEPD) program is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent them from encountering difficulties once they enter school, by improving the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

Projects funded under the ECEPD program provide high-quality, sustained, and intensive professional development for these early childhood educators in how to provide developmentally appropriate school-readiness services for preschool-age children that are based on the best available research on early childhood pedagogy and on child development and learning. For these grants, increased emphasis is being placed on the quality of program evaluations for the proposed projects.

The specific activities for which recipients may use grant funds are identified in the application package.

Priorities: This competition includes one absolute priority and two invitational priorities that are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 2151(e)(5)(A) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6651(e)(5)(A). The absolute priority and the two invitational priorities are as follows.

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority. This priority is:

High-Need Communities

The applicant partnership, if awarded a grant, shall use the grant funds to carry out activities that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that are located in ''high-need communities.''

An eligible applicant must demonstrate in its application how it meets the statutory requirement in section 2151(e)(5)(A) of the ESEA by including relevant demographic and socioeconomic data about the ''high-need community'' in which the program is located, as indicated in the application package. (See section 2151(e)(3)(B)(i) of the ESEA.)

''High-need community,'' as defined in section 2151(e)(9)(B) of the ESEA, means—

(a) A political subdivision of a State, or a portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or

(b) A political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children.

Note: The following additional terms used in or related to this absolute priority have statutory definitions that are included in the application package: ''early childhood educator,'' ''low-income family,'' and ''professional development.''

Under this competition we are particularly interested in applications that address the following two invitational priorities.

Invitational Priorities: For FY 2005, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

Invitational Priority 1—*Young Children with Limited English Proficiency, Disabilities, or Other Special Needs*

The Secretary is especially interested in applications that focus on providing professional development for early childhood educators who work with young children (including infants or toddlers, as applicable) with: limited English proficiency; disabilities, as identified under Parts B or C of the Individuals with Disabilities Education Act; or other special needs.

Note: The following terms used in this invitational priority have statutory definitions that are included in the application package: ''child with a disability,'' ''infants and toddlers with disabilities,'' and ''limited English proficient.''

Invitational Priority 2—*Classroom Curricula and Teacher Professional Development*

The Secretary also is especially interested in applications that focus on professional development for early childhood educators on the specific preschool curricula that are being used in their early childhood programs and that promote young children's school readiness in the areas of language and cognitive development and early reading and numeracy skills. The curricula should be based on scientifically based research, and have standardized training procedures and published curriculum materials to support implementation by the early childhood educators. The chosen curricula should include a scope and sequence of skills and content with concrete instructional goals that will promote early language, reading, and numeracy skills.

The need for rigorous preschool curricula is driven by the national focus on high-quality preschool experiences that prepare children for formal reading instruction in the elementary grades. The professional development in the ECEPD program provides opportunities for the program participants to achieve greater understanding of the implementation of scientifically based curricula that focus on early language, reading, and numeracy skills of young children. Grantees should focus on assisting the early childhood educators to fully implement the selected curricula and measuring learning outcomes for the children taught by those educators.

Program Authority: 20 U.S.C. 6651(e).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99, as applicable.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.
Estimated Available Funds: $14,695,000.
Estimated Range of Awards: $2,500,000 ''$5,000,000.
Estimated Average Size of Awards: $3,750,000.
Estimated Number of Awards: 3–6 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* A *partnership* consisting of at least one entity from each of the following categories, as indicated below:

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities.

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations).

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described in paragraphs (i) and (ii) under *Eligible Applicants.*

A partnership may apply for these funds only if one of the partners currently provides professional development for early childhood educators working in programs located in high-need communities with children from low-income families.

2. *Cost Sharing or Matching:* Each partnership that receives a grant under this program must provide (1) at least 50 percent of the total cost of the project for the entire grant period; and (2) at least 20 percent of the project cost for each year. The project may provide these funds from any source, other than this program, including other Federal sources. The partnership may satisfy these cost-sharing requirements by providing contributions in cash or in-kind, fairly evaluated, including plant, equipment, and services. Only allowable costs may be counted as part of the grantee's share. For example, any indirect costs over and above the allowable amount may not be counted toward a grantee's share. For additional information about indirect costs, see section IV.5. of this notice.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain an application via the Internet, use the following Web address: *http://www.ed.gov/programs/eceducator/index.html.* To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.349A.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.349A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) following the instructions in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this competition.

Page Limits: The application narrative for this program (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III of the application to the equivalent of no more than 30 typed pages. Part IV of the application is where you, the applicant, provide a budget narrative that reviewers use to evaluate your application. You must limit the budget narrative in Part IV of the application to the equivalent of no more than 5 typed pages. For all page limits, use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. Text in tables, charts, or graphs, and the limited Appendices, may be single spaced.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, graphs, and the limited Appendices, but those tables, charts, graphs and limited Appendices should be in a font size that is easily readable by the reviewers of your application.
- Any tables, charts, or graphs are included in the overall narrative page limit. The limited Appendices, including the partnership agreement required as a group agreement under 34 CFR 75.128, are not part of these page limits.
- Appendices are limited to the following: Required partnership agreement; and curriculum vitae of key personnel (including key contract personnel and consultants).
- Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

Our reviewers will not read any pages of your application that—

- Exceed the page limits if you apply these standards; or
- Exceed the equivalent of the page limits if you apply other standards.

3. *Submission Dates and Times.*

Applications Available: February 7, 2005.

Deadline for Transmittal of Applications: April 22, 2005.

Applications for grants under this program [competition] may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section

IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 21, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

(a) *Indirect Costs.* For purposes of indirect cost charges, the Secretary considers all ECEPD program grants to be ''educational training grants'' within the meaning of section 75.562(a) of EDGAR. Consistent with 34 CFR 75.562, the indirect cost rate for any fiscal agent other than a State agency or agency of local government (such as a local educational agency) is limited to a maximum of eight percent or the amount permitted by the fiscal agent's negotiated indirect cost rate agreement, whichever is less. Further information about indirect cost rates, and on how to apply for a negotiated indirect cost rate for fiscal agents that do not yet have one, is available at the following Web site: *http://www.ed.gov/about/offices/list/ocfo/intro.html?exp=0.*

(b) *Pre-award Costs:* For FY 2005 the Secretary exercises her authority under sections 75.263 and 74.25(e)(1) of EDGAR to approve pre-award costs incurred by recipients of these grants more than 90 calendar days before the grant award. Specifically, the Secretary approves necessary and reasonable pre-award costs incurred by these grant recipients for up to 90 days before the application deadline date. These pre-award costs must be related to the needs assessment that applicants conduct under section 2151(e)(3)(B)(iii) of the ESEA before submitting their applications, to determine the most critical professional development needs of the early childhood educators to be served by the project and in the broader community.

Applicants incur any pre-award costs at their own risk. The Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.*

Applications for grants under this program [competition] may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program [competition] after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524) , and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in

paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.349A), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.349A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.349A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. ECEPD program grantees also are required by section 2151(e)(6)(B) of the ESEA to report annually to the Secretary on the partnership's progress toward attaining the achievement indicators referenced in section VI. 4. *Performance Measures* in this notice. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* For FY 2005, grants under this program will be governed by the achievement indicators that the Secretary published in the **Federal Register** on March 31, 2003 (68 FR 15646–15648). These achievement indicators are included in the application package.

VI. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rosemary Fennell, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C–100, Washington, DC 20202–6132. Telephone: (202) 260–0792, or by e-mail: *eceprofdev@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: February 2, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–2438 Filed 2–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information, Recreational Programs Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.128J.

Dates:

Applications Available: February 14, 2005.

Deadline for Transmittal of Applications: March 29, 2005.

Deadline for Intergovernmental Review: May 31, 2005.

Eligible Applicants: States, public agencies, and nonprofit private organizations.

Estimated Available Funds: $1,027,111.

Estimated Range of Awards: $130,000–$140,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 8.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Recreational Programs is to provide individuals with disabilities with recreational activities and related experiences to aid in their employment, mobility, socialization, independence, and community integration. Recreation Programs initiate local recreation projects that will continue after Federal assistance ends.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on April 19, 2001 (66 FR 20176).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects must provide recreational services to individuals with disabilities. Recreational services include, but are not limited to, vocational skills development, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4–H activities, music, dancing, handicrafts, art, and homemaking. Recreational services do not include the construction of facilities for aquatic rehabilitation therapy.

Projects must provide recreational services to individuals with disabilities in settings with peers who are not individuals with disabilities.

Statutory Requirements

All applicants seeking funding under this competition must—

(a) Describe the manner in which the applicant will address the needs of individuals with disabilities from minority backgrounds (section 21(c) of the Rehabilitation Act of 1973, as amended) (the Act);

(b) Describe the manner in which the findings and results of the project to be funded under the grant, particularly information that facilitates the replication of the results of that project, will be made generally available (section 305(a)(4)(A) of the Act);

(c) Demonstrate ways in which recreational activities assist in maximizing the independence and integration of individuals with disabilities into community-based recreational programs (section 305(a)(1)(C) of the Act);

(d) Assure that the project will maintain, at a minimum, the same level of services over the three-year project period (section 305(a)(5) of the Act);

(e) Assure that the service program funded under the grant will be continued after Federal assistance ends (section 305(a)(4)(B) of the Act); and

(f) Provide non-Federal resources (in cash or in-kind) to pay the non-Federal share cost of the project in year two at 25 percent of year one Federal grant and year three at 50 percent of year one Federal grant (section 305(a)(3)(B) of the Act).

Program Authority: 29 U.S.C. 775.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,027,111.

Estimated Range of Awards: $130,000–$140,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States, public agencies, and nonprofit private organizations.

2. *Cost Sharing or Matching:* The Federal share of the cost of a project is 100 percent in the first year, 75 percent in the second year, and 50 percent in the third year. The local match may be in cash or in-kind contributions. See section 305(a)(3) of the Act.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain an application package via Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain an application package from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128J.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest that you limit Part III to approximately 35 double-spaced pages, using the following standards:

- A ''page'' is 8.5″ x 11,″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: February 14, 2005.

Deadline for Transmittal of Applications: March 29, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 31, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Recreational Programs—CFDA Number 84.128J must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524, and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Pedro Romero, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza, Washington, DC 20202–2800. Fax: (202) 245–7645.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for any exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.128J), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.128J), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.128J), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), a measure has been developed for evaluating the overall effectiveness of the Recreational Programs: the percentage of projects in operation one, two, and three years after Federal funding ends. The Rehabilitation Services Administration (RSA) collects data on this measure by contacting grantees once a year after the project period has ended. All grantees will be expected to submit an annual performance report documenting their success in maintaining the same level of service over their three-year project period and to provide information to RSA when they are contacted about their on-going activities after the project period has ended.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pedro Romero, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7645.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as

all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 2, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–2310 Filed 2–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

Agenda: During the meeting, NACIE members will receive an Ethics briefing from the Office of the General Counsel's Ethics Division, will discuss the upcoming reauthorization of the Elementary and Secondary Education Act (ESEA), and will be briefed by OGC and an outside expert on the legislative history of various laws impacting Indian education.

Date and Time: February 17, 2005; 9 a.m. to 4 p.m.

Location: The Department of Education, Bernard Auditorium, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202. **Note:** Attendees will be required to show picture identification to enter the building.

FOR FURTHER INFORMATION CONTACT: Bernard Garcia, Group Leader, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–260–1454. Fax: 202–260–7779.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the ESEA. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The general public is welcome to attend the February 17, 2005 meeting to be held from 9 a.m. to 4 p.m. Washington, DC. Individuals who need accommodations for a disability in order to participate (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Bernard Garcia at 202–260–1454 by February 11, 2005, We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public and will be available to the public within 14 days after the meeting. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C141, 400 Maryland Avenue, SW., Washington, DC 20202.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 05–2281 Filed 2–4–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research.''

DATES: Comments must be filed by April 8, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Kara Norman. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (kara.norman@eia.doe.gov) is recommended. The mailing address is Statistics and Methods Group, EI–70, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Kara Norman may be contacted by telephone at 202–287–1902.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Kara Norman at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and

other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA–882T is a generic clearance, which is a plan for conducting one or more customer surveys. A generic clearance is considered only when EIA is able to demonstrate that there is a need for multiple, similar collections, but that the specifics of each collection cannot be determined until shortly before the data are to be collected. The EIA–882T is used to conduct various projects, including pretest/pilot surveys (in-person interviews, telephone interviews, mail questionnaires, and electronic reporting options), focus groups, and cognitive interviews. The information collections that would be conducted as part of this approval will facilitate EIA's use of techniques to improve our current information collections and to develop new collections. Further goals are reduced respondent burden and improving the quality of the information collected. The number and type of respondents varies depending on the activities being conducted. The 882T was last extended for three years on August 16, 2002, and expires August 31, 2005.

The information collections will include:

1. Pretests. Pretest methods will include face-to-face interviews, telephone interviews, mail questionnaires, and electronic questionnaires. Pretests conducted will generally be methodological studies of limited size, normally involving either purposive or statistically representative samples. They will include a variety of surveys, the exact nature and sample designs will be determined at the time of development of the pretests. The samples will be designed to clarify particular issues rather than to be representative of the universe. Collection may be on the basis of convenience, *e.g.*, limited to specific geographic locations. The needs of a particular sample will vary based on the content of the information collection being tested, but the selection of sample cases will be made using sound statistical procedures.

2. Pilot surveys. Pilot surveys will generally be methodological studies of limited size, but will always employ statistically representative samples. The pilot surveys will replicate components of the methodological design, sampling procedures (where possible), and questionnaires of a full-scale survey. Pilot surveys may be utilized when EIA is undertaking a complete revamping of a survey methodology (*e.g.*, moving to computer-assisted information collections) or when EIA is undertaking a new information collection.

3. Focus groups. Focus groups involve group sessions guided by a monitor who follows a topical outline containing questions or topics focused on a particular issue, rather than adhering to a standardized questionnaire. Focus groups are useful for surfacing and exploring issues. Focus groups are typically used with specific groups of stakeholders.

4. Cognitive interviews. Cognitive interviews are one-on-one interviews in which a respondent is typically asked to ''think aloud'' as he or she answers survey questions, reads survey materials, or completes other activities as part of a survey process. A number of different techniques may be involved, including asking respondents to paraphrase questions, probing questions to determine how respondents come up with their answers, and similar inquiries. The objective is to identify problems of ambiguity, misunderstanding, or other difficulties respondents have answering questions. This may be used as the first stage of questionnaire development.

A wide variety of uses are made of the data obtained through this generic clearance. These projects represent significant strides in our efforts to improve the pretesting of EIA surveys. As EIA gains more experience, we are broadening our involvement in testing, evaluation, and research, including working with staff at the National Science Foundation.

II. Current Actions

EIA plans to request a three-year extension of the OMB approval for this collection. No changes are being proposed to the types of surveys being conducted under the generic clearance. For each information collection that EIA proposes to undertake under this generic clearance, OMB will be notified at least two weeks in advance, and provided with an information copy of the collection instrument and all other materials describing the testing activity. EIA will only undertake a collection if OMB does not object to EIA's proposal.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information:

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Public reporting burden for this collection is estimated to average .25 hours (15 minutes) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

C. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

As a Potential User of the Information To Be Collected:

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, February 1, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 05–2272 Filed 2–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–51–006, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Filings

January 31, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Detroit Edison Company

[Docket Nos. EL01–51–006 and ER01–1649–006]

Take notice that on January 21, 2005, The Detroit Edison Company filed revised pages of its Distribution Interconnection Agreement with Dearborn Industrial Generation, LLC, pursuant to the Commission's order in Detroit Edison Company, 109 FERC ¶ 61,329 (2004).

Comment Date: 5 p.m. eastern time on February 11, 2005.

2. Condon Wind Power, LLC

[Docket No. ER02–305–004]

Take notice that on January 26, 2005, Condon Wind Power, LLC (Condon) tendered for filing its triennial updated market analysis in compliance with the Commission's Order issued on December 19, 2001 in Docket No. ER02–305–000.

Comment Date: 5 p.m. eastern time on February 16, 2005.

3. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–2595–007]

Take notice that on January 19, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing revisions to Schedules 16 and 17 of its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

The Midwest ISO states that the purpose of the proposed revisions is to increase the amortization period for certain schedule 16 and 17 pre-operating expenses from five (5) to seven (7) years. The Midwest ISO requests an effective date of April 1, 2005.

The Midwest ISO states that it has electronically served a copy of this filing, with its attachments, upon all Midwest ISO members, member representatives of transmission owners and non-transmission owners, the Midwest ISO advisory committee participants, policy subcommittee participants, as well as all state commissions within the region. In addition, the Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested party upon request.

Comment Date: 5 p.m. eastern time on February 9, 2005.

4. Merrill Lynch Commodities, Inc.

[Docket No. ER04–925–002]

Take notice that on January 25, 2005, Merrill Lynch Commodities, Inc. (MLCI) tendered for filing a non-material change in characteristics that the Commission relied upon in granting MLCI market-based rate authorization under section 205 of the Federal Power Act.

Comment Date: 5 p.m. eastern time on February 15, 2005.

5. Oregon Electric Utility Company, Portland General Electric Company, Portland General Term Power, Procurement Company

[Docket No. ER04–1206–002]

Take notice that on January 21, 2005, Oregon Electric Utility Company (OEUC), Portland General Electric Company (PGE) and Portland General Term Power Procurement Company (PPC), filed a supplement to their January 18, 2004 filing in Docket No. ER04–1206–002 submitted in response to the deficiency letter issued December 17, 2004 in Docket Nos. ER04–1206–000 and 001.

Comment Date: 5 p.m. eastern time on February 10, 2005.

6. The Union Light, Heat and Power Company, The Cincinnati Gas & Electric Company

[Docket No. ER04–1248–001]

Take notice that on January 26, 2005, The Union Light, Heat and Power Company (ULH&P) and The Cincinnati Gas & Electric Company (CG&E) filed an amendment to their September 27, 2004 filing in response to the Commission's deficiency letter issued on January 11, 2005 in Docket No. ER04–1248–000.

ULH&P and CG&E state that copies of the filing were served on parties on the official service list in Docket No. ER04–1248.

Comment Date: 5 p.m. eastern time on February 16, 2005.

7. Kansas City Power & Light Company

[Docket No. ER05–177–007]

Take notice that on January 25, 2005, Kansas City Power & Light Company (KCPL) submitted a compliance filing pursuant to the Commission's Order issued December 28, 2004 in Docket No. ER05–177–000. KCPL states that this filing pertains to service schedules for the City of Salisbury, Missouri.

KCPL states that copies of the filing were served upon the City of Salisbury, Missouri as well as the Missouri Public Service Commission and the Kansas State Corporation Commission.

Comment Date: 5 p.m. eastern time on February 15, 2005.

8. Kansas City Power & Light Company

[Docket No. ER05–177–008]

Take notice that on January 25, 2005, Kansas City Power & Light Company (KCPL) submitted a compliance filing pursuant to the Commission's Order issued December 28, 2004 in Docket No. ER05–177–000. KCPL states that this filing pertains to service schedules for the City of Osawatomie, Kansas.

KCPL states that copies of the filing were served upon the City of Osawatomie, Kansas as well as the Missouri Public Service Commission and the Kansas State Corporation Commission.

Comment Date: 5 p.m. eastern time on February 15, 2005.

9. City Power Marketing LLC

[Docket No. ER05–330–001]

Take notice that on January 25, 2005, City Power Marketing LLC, submitted additional information regarding its December 14, 2004 filing in Docket No. ER05–330–000 for acceptance of initial rate schedule, request for waivers and blanket authority.

Comment Date: 5 p.m. eastern time on February 15, 2005.

10. MidAmerican Energy Company

[Docket No. ER05–482–000]

Take notice that on January 24, 2005, MidAmerican Energy Company (MidAmerican) filed with the Commission an Electric Transmission Interconnection Agreement between MidAmerican and Corn Belt Power Cooperative. MidAmerican requests an effective date of January 1, 2005 for the Agreement.

MidAmerican states it has served a copy of the filing on Corn Belt Power Cooperative, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: 5 p.m. eastern time on February 14, 2005.

11. Union Electric Company

[Docket No. ER05–485–000]

Take notice that on January 25, 2005, Union Electric Company d/b/a

AmerenUE (AmerenUE) filed an amendment to the Interchange Agreement between AmerenUE and Associated Electric Cooperative, Incorporated (Associated). AmerenUE requests an effective date of March 26, 2005.

Ameren UE states that copies of the filing were served on Associated, the Midwest Independent Transmission System Operator, Inc. and the Missouri Public Service Commission.

Comment Date: 5 p.m. eastern time on February 15, 2005.

12. PJM Interconnection, L.L.C. Commonwealth Edison Company

[Docket No. ER05–488–000]

Take notice that on January 25, 2005, Commonwealth Edison Company (ComEd) and PJM Interconnection, L.L.C. (PJM) filed a Notice of Termination of Third Substitute First Revised Service Agreement No. 1032 under PJM's Open Access Transmission Tariff, Sixth Revised Volume No. 1, Financial Hold Harmless Service Agreement (Agreement). ComEd and PJM request that termination of the Agreement shall be effective once ComEd makes the payments specified in the settlement agreements with the Michigan and Wisconsin Utilities.

Comment Date: 5 p.m. eastern time on February 15, 2005.

13. Southern California Edison Company

[Docket No. ER05–489–000]

Take notice that on January 26, 2005, Southern California Edison Company (SCE) submitted revised rate sheets to the Amended and Restated Huntington Beach Generating Station Radial Lines Agreement (Agreement) between SCE and AES Huntington Beach, L.L.C. (AES). SCE requests an effective date of April 6, 2001.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and AES.

Comment Date: 5 p.m. eastern time on February 16, 2005.

14. Southwest Power Pool, Inc.

[Docket No. ER05–490–000]

Take notice that on January 26, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-To-Point Transmission Service with Southwestern Public Service Company (Southwestern). SPP seeks an effective date of January 1, 2005 for the service agreement.

SPP states that Southwestern was served with a copy of this filing.

Comment Date: 5 p.m. eastern time on February 16, 2005.

15. ISO New England Inc. and New England Power Pool

[Docket No. ER05–492–000]

Take notice that on January 26, 2005, ISO New England Inc.(ISO) and the New England Power Pool (NEPOOL) Participants Committee filed an amendment to NEPOOL Market Rule 1, section 7.3.5, and the same amendment to section III.7.3.5 of the Transmission, Markets and Service Tariff of ISO New England Inc., FERC Electric Tariff No. 3. ISO and NEPOOL state that the amendments permit negative Financial Transmission Rights bids in the New England market.

ISO and NEPOOL state that copies of the filing were sent to the New England state governors and regulatory agencies and the participants in NEPOOL.

Comment Date: 5 p.m. eastern time on February 16, 2005.

16. Saracen Energy LP

[Docket No. ER05–493–000]

Take notice that on January 26, 2005, Saracen Energy LP submitted an application for Commission authorization to engage in wholesale sale of electricity at market-based rates, Commission acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, and the waiver of certain of the Commission's Regulations.

Comment Date: 5 p.m. eastern time on February 16, 2005.

17. Saracen Energy Power Advisors LP

[Docket No. ER05–494–000]

Take notice that on January 26, 2005, Saracen Energy Power Advisors LP submitted an application for Commission authorization to engage in wholesale sale of electricity at market-based rates, Commission acceptance of its Rate Schedule FERC

No. 1, the granting of certain blanket approvals, and the waiver of certain of the Commission's Regulations.

Comment Date: 5 p.m. eastern time on February 16, 2005.

18. Saracen Merchant Energy LP

[Docket No. ER05–495–000]

Take notice that on January 26, 2005, Saracen Merchant Energy LP submitted an application for Commission authorization to engage in wholesale sale of electricity at market-based rates, Commission acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, and the waiver of certain of the Commission's Regulations.

Comment Date: 5 p.m. eastern time on February 16, 2005.

19. K2 Development LLC

[Docket No. ER05–496–000]

Take notice that on January 26, 2005, K2 Development LLC submitted a Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: 5 p.m. eastern time on February 16, 2005.

20. United States Department of Energy Western Area Power Administration

[Docket No. NJ05–1–000]

Take notice that on January 26, 2005, the United States Department of Energy—Western Area Power Administration (western), filed a non-jurisdictional modification to its Open Access Transmission Tariff (OATT), including Large Generator Interconnection Procedures and Large Generator Interconnection Agreement. Western has requested an effective date of February 25, 2005.

Comment Date: 5 p.m. eastern time on February 16, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–453 Filed 2–4–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7870–1]

Science Advisory Board Staff Office Notification of an Upcoming Meeting of the Science Advisory Board; Superfund Benefits Analysis Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public meetings of the SAB Superfund Benefits Analysis Advisory Panel.

DATES: *February 11, 2005.* A public teleconference of the SAB Superfund Benefits Analysis Advisory Panel will be held from 2 p.m. to 4 p.m. Eastern time on February 11, 2005.

February 24–25, 2005. A public meeting of the Superfund Benefits Analysis Advisory Panel will be held on February 24–25, 2005 in the SAB Conference Center at 1025 F Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to submit written or brief oral comments (five minutes or less) must contact Dr. Holly Stallworth, Designated Federal Officer, at telephone: (202) 343–9867 or via e-mail at: *stallworth.holly@epa.gov*s. Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the meeting in order to reserve time on the meeting agenda. It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. Any member of the public wishing further information regarding the SAB or the Superfund Benefits Analysis Advisory Panel may also contact Dr. Stallworth, or visit the SAB Web site at: *http://www.epa.gov/sab/*.

Technical Contact: The technical contact in EPA's Office of Solid Waste and Emergency Response for the Superfund Benefits Analysis is Ms. Melissa Friedland who can be reached at (703) 603–8864 or *friedland.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Office of Solid Waste and Emergency Response (OSWER) has issued a draft study of the benefits of the Superfund program. This draft study is entitled Superfund Benefits Analysis and may be found at: *http://www.epa.gov/superfund/news/benefits.htm.* OSWER has requested the SAB for advice on its Superfund Benefits Analysis. A ''widecast'' soliciting expertise for the Superfund Benefits Analysis Advisory Panel was published in a Notice on July 30, 2004 (69 FR 45705–45706).

On February 11, 2005, the SAB Panel will discuss charge questions and general plans for the advisory meeting that will follow. The charge questions to this Panel will be posted at the SAB Web site at: *http://www.epa.gov/sab/panels/sba_adv_panel.htm* prior to the meeting. On February 24–25, panelists will review the EPA's draft Superfund Benefits Analysis and discuss responses to charge questions. Meeting materials and agendas for the February 11, 2005 teleconference and for the face-to-face meeting of February 24–25, 2005 will be posted on the SAB Web site prior to each meeting.

Procedures for Providing Public Comment: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the Panel's meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Stallworth at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 25, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–2307 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION.

[Report No. AUC–05–60 (Auction No. 60); DA 05–171]

Auction of Lower 700 MHZ Band Licenses Scheduled for July 20, 2005 Comment Sought On Reserve Prices OR Minimum Opening Bids and Other Procedures for Auction No. 60

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of five licenses in the lower 700 MHz band C Block (710–716/740–746 MHz) licenses scheduled to commence on July 20, 2005 (Auction No. 60). This document also seeks comment on reserve prices or minimum opening bids and other procedures for Auction No. 60.

DATES: Comments are due on or before February 11, 2005, and reply comments are due on or before February 18, 2005.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction60@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Howard Davenport (202) 418–0660. For general auction questions: Roy Knowles or Lisa Stover at (717) 338–2888. For service rule questions, contact the Mobility Division, Wireless Telecommunications Bureau, as follows: Erin McGrath, Keith Harper, or JoAnn Epps at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released January 26, 2005 *Auction No. 60 Comment Public Notice.* The complete text of the *Auction No. 60 Comment Public Notice,* including attachments and any related Commission documents is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257,

Washington, DC 20554. The *Auction No. 60 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Website: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 01–364 for the lower 700 MHz Report and Order). The *Auction No. 60 Comment Public Notice* and related documetns are also available on the Internet at the Commission's Website: *http://wireless.fcc.gov/auctions/60/.*

I. General Information

1. By the *Auction No. 60 Comment Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the auction of lower 700 MHz band licenses, scheduled to commence on July 20, 2005 (auction No. 60). This auction will include the C Block Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) licenses that remain unsold in Auction No. 49, which closed on June 13, 2003. The C block is a 12-megahertz spectrum block, consisting of a pair of 6-megahertz segments. A complete list of licenses available for Auction No. 60 is set forth both below and in Attachment A of *Auction No. 60 Comment Public Notice.*

Market no.	Market name	License no.	Block	Frequency
CMA169	Mayaguez, PR	WZ–CMA169–C	C	710–716, 740–746
CMA202	Arecibo, PR	WZ–CMA202–C	C	710–716, 740–746
CMA723	Puerto Rico 1—Rincon	WZ–CMA723–C	C	710–716, 740–746
CMA727	Puerto Rico 5—Ceiba	WZ–CMA727–C	C	710–716, 740–746
CMA729	Puerto Rico 7—Culebra	WZ–CMA729–C	C	710–716, 740–746

2. Auction No. 60 will be the first auction to use the FCC's Integrated Spectrum Auction System (''ISAS or FCC Auction System''), an extensive redesign of the previous auction application and bidding systems. The redesign includes FCC Form 175 application enhancements such as discrete data elements in place of free-form exhibits and improved data accuracy through automated checking of FCC Form 175 applications. Enhancements have also been made to the FCC Form 175 application search function. The auction bidding system has also been updated for easier navigation, customizable results, and improved functionality. The Bureau will release subsequent public notices that outline more specific information on these enhancements and announce schedules for demonstrations.

II. Auction Structure

A. Simultaneous Multiple-Round Auction Design

3. The Bureau proposes to award licenses included in Auction No. 60- in a simultaneous multiple-round auction. This methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids on individual licenses. The Bureau seeks comment on this proposal.

B. Upfront Payment and Bidding Eligibility

4. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. The upfront payment is a refundable deposit by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 60, the Bureau proposes to calculate upfront payments on a license-by-license basis using a formula based on bandwidth and license area population:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license. The specific proposed upfront payment for each license available in Auction No. 60 is set forth in Attachment A. The Bureau seeks comment on this proposal.

5. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each license is assigned a specific number of bidding units equal to the upfront payment on a bidding unit per dollar basis. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. The Bureau seeks comment on this proposal.

C. Activity Rules

6. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the action. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

7. The Bureau proposes to divide the auction into two stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new

bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

8. For Auction No. 60, the Bureau proposes the following activity requirements: *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-months (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

9. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

11. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the ''reduce eligibility'' function in the FCC Auction System. In this case, the bidder's eligiblity is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the ''apply waiver'' function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

14. The Bureau proposes that each bidder in Auction No. 60 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The bureau seeks comment on proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

15. For Auction No. 60, the Bureau propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

III. Bidding Procedures

A. Round Structure

16. The Commission will conduct Auction No. 60 over the Internet. Alternatively, telephonic bidding will also be available. The toll free telephone number through which telephonic bidding may be accessed will be provided to bidders.

17. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

18. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review rounds, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

19. Section 309(j) of the Communications Act calls up the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

20. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used

to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

21. In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 60. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool.

22. Specifically, for Auction No. 60, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population:

$0.01 *MHz* License Area Population with a minimum of $1,000 per license. The specific minimum opening bid amount for each license available in Auction No. 60 is set forth in Attachment A of this Public Notice. The Bureau seeks comment on this proposal.

23. If commenters believe that these minimum opening bid amounts will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the lower 700 MHz band spectrum. The Bureau seeks comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

C. Minimum Acceptable Bid Amounts and Bid Increments

24. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each license.

25. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus an additional amount. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus an increment percentage—*e.g.,* if the increment percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. The Bureau will round the result using our standard rounding procedures. For Auction No. 60, the Bureau proposes to use a bid increment of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

26. The nine acceptable bid amounts for each license consist of the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. The Bureau will round the results using our standard rounding procedures. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc.

27. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

28. The Bureau retains the discretion to change the minimum acceptable bid amounts and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System. The Bureau seeks comment on these proposals.

D. Provisionally Winning Bids

29. At the end of a bidding round, a provisionally winning bid amount for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*e.g.*, tied bids), the Bureau proposes to use a random number generator to select a single provisionally winning bid from among the tied bids. If the auction were to end with no higher bids being placed for that license, the winning bidder would be the one that placed the selected provisionally winning bid. However, the remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

30. A provisionally winning bid will remain the provisionally bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that provisionally winning bids confer credit for activity.

E. Information Regarding Bid Withdrawal and Bid Removal

31. For Auction No. 60, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

32. A bidder may withdraw its provisionally winning bids using the ''withdraw bids'' function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

33. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders

from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

34. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 60 to withdrawing provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in the round in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

35. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 60, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses.

36. Bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or places any withdrawals. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

37. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 60:

i. Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage two of the suction.

ii. Keep the auction open even if no bidder submits any new bids, applies a waiver or places any withdrawals. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

38. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

IV. Conclusion

39. Comments are due on or before February 11, 2005, and reply comments are due on or before February 18, 2005. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments, and copies of material filed with the Commission pertaining to Auction No. 60, must be sent by electronic mail to the following address: *auction60@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 60 Comments and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat ® (pdf) or Microsoft ® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–B402, 445 12 Street, SW., Washington, DC 20554, and will also be posted on the Web page for Auction No. 60 at *http://wireless.fcc.gov/auctions*.

40. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission

Gary D. Michaels,

Deputy Chief, Auction and Spectrum Access Division, WTB.

[FR Doc. 05–2271 Filed 2–4–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2691]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

January 31, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by February 22, 2005. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Dismissed Modification Application for WHR901, Florida Atlantic University, Boynton Beach, Florida (WT Docket No. 03–66).

Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands (WT Docket No. 03–66, RM–10586).

Part 1 of the Commission's Rules—Further Competitive Bidding Procedures (WT Docket No. 03–67).

Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way

Transmissions (MM Docket No. 97–217).

Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico (WT Docket No. 02–68, RM–9718).

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets (WT Docket No. 00–230).

Number of Petitions Filed: 24.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2270 Filed 2–4–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

* * * * *

Previously Announced Date and Time: Thursday, February 10, 2005, 10 a.m. meeting open to the public. This meeting was canceled.

* * * * *

DATE AND TIME: *Monday, February 14, 2005, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–43: Missouri Broadcasters Association, by counsel Gregg P. Skall.

Notice of Proposed Rulemaking on Candidate Solicitation at State, District, and Local Party Fundraising Events.

* * * * *

DATE AND TIME: *Tuesday, February 15, 2005 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed To the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–2458 Filed 2–3–05; 2:58 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 2005.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Michael J. Rivers, Winona, Minnesota; to acquire voting shares of Central Wisconsin Financial Services, Inc., Wausau, Wisconsin, and thereby indirectly acquire voting shares of Bank of Wausau, Wausau, Wisconsin.

Board of Governors of the Federal Reserve System, February 1, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2263 Filed 2–4–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. BankFive, MHC, and BankFive Corporation, both of Fall River, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Fall River Five Cents Savings Bank, Fall River, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Community Banks, Inc., Harrisburg, Pennsylvania; to merge with Pennrock Financial Services Corp., and thereby indirectly acquire The Blue Ball National Bank, all of Blue Ball, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Copiah Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Copiah Bank, National Association, both of Hazlehurst, Mississippi.

Board of Governors of the Federal Reserve System, February 1, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2262 Filed 2–4–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Delegation of Authority To Respond to Requests From Mexico's Procuraduria Federal del Consumidor

AGENCY: Federal Trade Commission.

ACTION: Delegation of authority.

SUMMARY: The Commission has delegated authority to the Associate Director for International Consumer Protection to respond to disclosure and other requests from Mexico's Procuraduría Federal del Consumidor (Profeco) pursuant to a memorandum of understanding with the Commission.

EFFECTIVE DATES: January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Pablo Zylberglait, Legal Advisor for International Consumer Protection, International Division of Consumer Protection, (202) 326–3260, *pzylberglait@ftc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 24 FR 6191, that the Commission has delegated to the Associate Director for International Consumer Protection the authority to respond to disclosure and other requests from Mexico's Procuraduría Federal del Consumidor pursuant to a memorandum of understanding with the Commission about consumer protection information sharing and enforcement cooperation. This delegated authority does not apply to competition-related investigations. When exercising its authority under this delegation, staff may only disclose information regarding consumer protection matters involving Mexico, and will require assurances of confidentiality from Profeco. Disclosures shall be made only to the extent consistent with current limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–2275 Filed 2–4–05; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANS #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—01/04/2005			
20050383	SBC Communications Inc	Yantra Corporation	Yantra Corporation.
20050384	Quantum Fuel Systems Technologies Worldwide, Inc.	Starcraft Corporation	Starcraft Corporation.
20050394	Selectica, Inc	I-many, Inc	I-many, Inc.
20050397	Witness Systems, Inc	Blue Pumpkin Software, Inc	Blue Pumpkin Software, Inc.
20050398	LifePoint Hospitals, Inc	Danville Regional Health System, Inc	Ambulatory Services of Danville. Danville Regional Medical Center. Memorial Properties, Inc.
20050399	Citigroup Inc	ABRY Partners IV, L.P	Gallarus Media Holdings, Inc
20050400	Prudential plc	ING Groep N.V	Life Insurance Company of Georgia. Life of Georgia Agency, Inc.
20050402	Alamosa Holdings, Inc	AirGate PCS, Inc	AirGate PCS, Inc.
20050403	eBay Inc	Viva Group. Inc	Viva Group. Inc
20050405	ProQuest Company	Voyager Expanded Learning, Inc	Voyager Expanded Learning, Inc.
20050410	Diageo plc	The Chalone Wine Group, Ltd	The Chalone Wine Group, Ltd.
20050415	Black Box Corporation	Norstan, Inc	Norstan, Inc.
Transactions Granted Early Termination—01/05/2005			
20041257	The Cooper Companies, Inc	Ocular Sciences, Inc	Ocular Sciences, Inc.
20050344	Patterson-UTI Eneergy, Inc	Key Energy Services, Inc	Key Energy Drilling, Beneficial, L.P. Key Energy Drilling, Inc. Key Four Corners, Inc. Key Rocky Mountain, Inc.
20050388	Ascend Media Holdings, LLC	Media/Communications Partners II Limited Partnership.	Medical World Communications, Inc.
20050390	Fritz R. Kundrun	Alpha Nautral Resources, Inc	Alpha Nautral Resources, Inc.
20050391	Hans Mende	Alpha Nautral Resources, Inc	Alpha Nautral Resources, Inc.
20050392	First Reserve Fund IX, L.P	Alpha Nautral Resources, Inc	Alpha Nautral Resources, Inc.
20050406	Affiliated Computer Services, Inc	Superior Consultant Holdings Corporation.	Superior Consultant Holdings Corporation.
20050407	Dubai Ports International FX LTD	CSX Corporation	SL Service, Inc.

TRANS #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—01/06/2005			
20050386	Summit Ventures VI–A, L.P	Thomas F. Leahy	Help/Systems, Incorporated.
20050413	TANDBERG Television ASA	N2 Broadband, Inc	N2 Broadband, Inc.
Transactions Granted Early Termination—01/07/2005			
20050333	Morgan Stanley	PULSE EFT Association	PULSE EFT Association.
20050404	Honeywell International Inc	Novar plc	Novar plc.
20050422	Investment Technology Group, Inc	Morgan Stanley	POSIT®.
200504423	J.P. Morgan Chase & Co	Bristol-Myers; Squibb Company	Bristol-Myers Oncology Therapeutics Network, Inc., OTN Parent Corp.
20050427	Legend Holdings Limited	International Business Machines Corporation.	IBM Products AP Ltd. IBM Products Asia Pte Ltd. IBM Products Holdings Spri. IBM Products U.K. Ltd.
20050429	J.P. Morgan Chase & Co	PQ Corporation	PQ Corporation.
20050432	Serco Group, plc	CM Equity Partners, LP RCI Holding Corporation	RCI Holding Corporation.
Transactions Granted Early Termination—01/10/2005			
20050356	Summer M. Redstone	Sinclair Broadcast Group, Inc	Chesapeake Television, Inc. SCI–Sacramento Licensee, L.L.C.
20050431	3Com Corporation	TippingPoint Technologies, Inc	TippingPoint Technologies, Inc.
20050434	Perry Ellis International, Inc	Tropical Sportswear Int'l Corporation	Tropical Sportswear Int'l Corporation.
Transactions Granted Early Termination—01/11/2005			
20050359	Onex Partners LP	Laidlaw International, Inc	American Medical Response, Inc. EmCare Holdings Inc.
20050387	Schawk, Inc	KAGT Holdings, Inc	KAGT Holdings, Inc.
20050411	The Veritas Capital Fund II, L.P	Computer Sciences Corporation	DynCorp International Asset Corp. DynCorp International, LLC.
20050421	Lone Star Fund V (U.S.), L.P	Koninklijke Ahold N.V	ARP, etc. BI–LO, LLC. Bruno's, Inc., Bruno's Supermarkets, Inc. Golden Gallon Holding LLC. v/s BI–LO Brands, Inc.
20050437	CentralPoint Energy, Inc	American Electric Power Company, Inc.	AEP Texas Central Company.
Transactions Granted Early Termination—01/13/2005			
20050426	Highmark, Inc	Harvey Ross	Viva Optique, Inc.
20050439	UBS AG	Jullius Baser Holding Ltd	Bank Julius Baer & Co. Ltd. Julius Baer Investment Advisory (Canada) Ltd. Julius Baer Securities Inc.
Transactions Granted Early Termination—01/14/2005			
20050424	Moulin International Holdings Limited	Thoams H. Lee Equity Fund IV, L.P.	Eye Care Centers of America, Inc.
20050435	MTC Technologies	Dr. Paul Hsu and Majes Hsu	Manufacturing Technology, Inc.
20050440	GGC Investment Fund II, L.P	ECCA Holdings Corporation	ECCA Holdings Corporation.
20050441	Moulin International Holdings Limited	ECCA Holdings Corporation	ECCA Holdings Corporation.
20050467	Source Interlink Companies, Inc	Yucaipa One-Stop Partners, L.P.	Alliance Entertainment Corp.
20050468	Yucaipa One-Stop Partners, L.P.	Source Interlink Companies, Inc	Source Interlink Companies, Inc.
20050472	FMR Corp	Fiserv Inc.	BHC Investments, Inc.
Transactions Granted Early Termination—01/19/2005			
20050445	Mohawk Paper Mills, Inc	International Paper Company	International Paper Company.
20050471	KKR Millennium Fund (Overseas), Limited Partnership.	Masonite International Corporation	Masonite International Corporation.
20050475	American International Group, Inc	Wachovia Corporation	First Union Financial Investments, Inc. Wachovia Capital Investments, Inc.
20050477	Warburg Pincus Private Equity VIII, L.P.	Boston Ventures Limited Partnership VI.	Camp Systems International, LLC.
20050478	EMC Corporation	System Management Arts Incorporated.	System Management Arts Incorporated.

TRANS #	Acquiring	Acquired	Entities
20050489	Highland Capital Partners VI	Michael Mann	Rare Domains.com, LLC. Rare Names, LLC.
Transactions Granted Early Termination—01/21/2005			
20050487	Cofra Holding AG	Aaron D. Spencer	Uno Restaurant Holdings Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–2276 Filed 2–4–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0031]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit written or electronic comments on the collection of information by April 8, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA (as delegate for the Secretary of Health and Human Services) upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. FDA's regulations at part 190, subpart B (21 CFR part 190, subpart B) implement these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutritional Products, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary

supplement containing a new dietary ingredient is in full compliance with the act.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
190.6	71	1	71	20	1,420

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act will require a burden of approximately 20 hours of work per submission.

This estimate is based on the annual average number of premarket notifications FDA received during the last 3 years (i.e., 2002 to 2004), which was 47. Forty-seven represents 24 more notifications than the agency received as an annual average during the previous 3-year period (i.e., 1999 to 2001). Therefore, FDA anticipates a similar upward trend will be seen in the annual average number of notifications the agency receives during 2005 to 2007, which is estimated to be 71.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2207 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0093]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 19, 2004 (69 FR 42999), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0045. The approval expires on December 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2296 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0032]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Submit written or electronic comments on the collection of information by April 8, 2005.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information,

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA functions, including whether the information will have practical utility; (2) the accuracy of FDA estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (§ 113.87(a) (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR part 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 2541 (Registration)	108.25 and 108.35	585	1	585	.17	99
FDA 2541a (Process Filing)	108.25 and 108.35	1,778	9	16,002	.333	5,329
FDA 2541c (Process Filing)	108.35	124	10	1,240	.75	930
Total						6,358

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
113 and 114	7,915	1	7,915	250	1,978,750

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross reference recordkeeping requirements contained in parts 113 and 114.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2297 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0045]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to FDA's electronic records and electronic signatures.

DATES: Submit written or electronic comments on the collection of information by April 8, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—(21 CFR Part 11) (OMB Control Number 0910–0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records; electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the agency has stated our ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require standard operating procedures (SOPs) to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) Section 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) section 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) section 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) section 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of SOPs, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents will be businesses and other for-profit organizations, state or local governments, Federal agencies, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11.100	4,500	1	4,500	1	4,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.10	2,500	1	2,500	20	45,000
11.30	2,500	1	2,500	20	45,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					270,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2298 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0312]

Animal Feed Safety System: A Comprehensive Risk-Based Safety Program for the Manufacture and Distribution of Animal Feeds; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss our progress on development of a comprehensive, risk-based Animal Feed Safety System (AFSS) describing how animal feeds (individual ingredients and mixed feeds) should be manufactured, distributed, and used to minimize risks to humans and animals. We are seeking comments and assistance in our consideration of this safety program to effectively minimize the hazards to public health posed by animal feed products.

Date and Time: The public meting will be held on Tuesday, April 5, 2005, from 8 a.m. to 5 p.m., and Wednesday, April 6, 2005, from 8 a.m. to 12:15 p.m. You may submit written or electronic comments at any time, but they would be most helpful if received on or before March 4, 2005.

Location: The public meeting will be held at The Crowne Plaza, 655 North 108th Ave., Omaha, NE 68154, 402–496–0850.

ADDRESSES: You may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments. You can view comments FDA has received on the Internet at *http://www.fda.gov/ohrms/dockets/*.

Contacts:

For General Information: Zoe Gill, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6867, FAX: 240–453–6882, or e-mail: *zoe.gill@fda.gov*.

For Information About Registration: Brenda Boateng, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6850, FAX: 240–453–6882, or e-mail: *brenda.boateng@fda.gov*.

Registration: Registration forms are available on the Division of Dockets Management Web site at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Although there is no registration fee for this meeting, registration is required. Due to limited meeting space, and to permit the agency to adequately prepare for the meeting, early registration is strongly encouraged. We are asking that registration occur by March 11, 2005. You may register by telephone, fax, or e-mail by contacting Brenda Boateng (*see Contacts*).

If you need special accommodations due to a disability, please contact Toni Wooten at 301–595–0796 or by e-mail at *toni.wooten@fda.gov* at least 7 days in advance of the meeting.

Transcripts: You may request a transcript of the meeting's general session in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857. The transcript will not include the individual breakout sessions, although their summaries will be included in the general session transcript. The transcript of the public meeting will be available after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday and on the CVM Web site at *http://www.fda.gov/cvm*.

SUPPLEMENTARY INFORMATION:

I. Background

We envision the AFSS as an umbrella regulatory program aimed at protecting human and animal health, It is intended to cover the labeling, production, and distribution of all feed ingredients and mixed feeds at all stages of manufacture, distribution, and use.

On September 23 and 24, 2003, we held a public meeting in Herndon, VA to discuss the AFSS. The public meeting included active participation of people

representing consumers, animal feed processors, animal producers, and State and other Federal Government agencies. Following the meeting, we placed a number of documents in the FDA Docket named at the beginning of this notice. These documents included a transcript of the meeting, summaries of breakout discussion groups, presentations of invited speakers, and a summary of the meeting. We stated our view that an AFSS should be comprehensive and risk-based, and we have since drafted definitions for these terms and placed them in this Docket. Likewise, we created and placed in the Docket a listing of elements we felt would be essential for process control under an AFSS. After reviewing comments to these items in the Docket, we drafted the following framework for the AFSS, including the four major components we see as comprising the AFSS:

- Component 1—Ingredients and the approval process.
- Component 2—Limits for animal feed contaminants.
- Component 3—Process control for the production of feed ingredients and mixed feed.
- Component 4—Regulatory oversight.

This new document has been added to our Web site and the Docket and will be discussed at the meeting. We also intend to discuss a draft risk-ranking model under development by the agency for determining the relative risks of the numerous hazards that may be present in animal feed. Your comments on our proposed framework, including Components 1 through 4, and any risk-related topics would be most appreciated. Please submit all comments by March 4, 2005.

II. Meeting

We are holding the meeting in an effort to further gather information from you, our stakeholders, on the design of an effective, comprehensive, preventive, risk-based AFSS that is intended to help minimize risks associated with animal feeds.

Resources and costs are important considerations in any such undertaking, and we are receptive to suggestions about how these can be controlled or used most effectively while focusing preventive efforts on important known and emerging health risks associated with animal feeds. We are particularly interested in your thoughts on the application of Hazard Analysis and Critical Control Point (HACCP) (mandatory or voluntary) to any or all segments of the industry, development of risk standards for contaminants, revising existing good manufacturing practices (GMPs) to make them more risk-based, development of GMP-type regulations and/or guidance for producers of feed ingredients and nonmedicated feeds, extending regulatory control to users of feed, and the role of State and first-party inspections.

On the morning of the first day of the meeting, we will summarize the aforementioned documents placed in our docket, followed by breakout sessions in the afternoon to discuss each topic. Additionally, one group will be asked to discuss the perceived benefits of the AFSS. The breakout group(s) on risk analysis and risk-ranking is likely to be of greatest interest to meeting attendees who have a scientific background. If you are interested in participating in the breakout group on risk analysis and risk-ranking, please indicate this on your registration form. We will do our best to accommodate these requests.

Discussions will be summarized in breakout group reports on the final day of the meeting. The meeting will wrap up with an open discussion and closing remarks.

III. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (*see* **ADDRESSES**). Comments should be identified with the full title and the docket number found in brackets in the heading of this document. A copy of the received comments will be available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2210 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0466]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Guidance for Industry on Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (Chronic) Toxicity Testing (VICH GL–37); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry (#160) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (Chronic) Toxicity Testing'' (VICH GL–37). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH guidance document is intended to establish recommendations for internationally harmonized repeat-dose chronic toxicity testing.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development

among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Guidance on Repeat-Dose Chronic Toxicity Testing

In the **Federal Register** of October 23, 2003 (68 FR 60703), FDA published the notice of availability of the VICH draft guidance, giving interested persons until November 24, 2003, to submit comments. After consideration of comments received, the draft guidance was changed in response to the comments and submitted to the VICH Steering Committee. At a meeting held on May 3, 2004, the VICH Steering Committee endorsed the final guidance for industry, VICH GL–37. This VICH guidance is one of a series of guidances developed to facilitate the mutual acceptance of safety data necessary for the determination of acceptable daily intakes for veterinary drug residues in human food. This guidance was developed after consideration of the current practices for evaluating veterinary drug residues in human food in the European Union, Japan, the United States, Australia, New Zealand, and Canada. It also took account of available data from subchronic and chronic toxicity studies.

Information collection is covered under the Office of Management and Budget (OMB) control number 0910–0032.

III. Significance of Guidance

This document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH document have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommend'' or ''recommendation'' as appropriate to the context.

The VICH guidance (#160) is consistent with the agency's current thinking on the safety of residues of veterinary drugs in human foods. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the guidance document entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (Chronic) Toxicity Testing'' (VICH GL–37) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: January 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2266 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

University of Arkansas/Food and Drug Administration Food Labeling; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Regional Small Business Representative Program (SWR SBR), in collaboration with The University of Arkansas (UA), is announcing a public workshop entitled ''UA/FDA Food Labeling Workshop.'' This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on April 5, 2005, from 8 a.m. to 5 p.m., and on April 6, 2005, from 8 a.m. to 3 p.m.

Location: The public workshop will be held at the Continuing Education Center in Fayetteville, AR, located downtown (2 East Center St.).

Contact: Steven C. Seideman, 2650 North Young Ave., Institute of Food Science & Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or e-mail: *seideman@uark.edu*.

For information on accommodation options, contact Steven C. Seideman (see *Contact*).

Registration: Registration by March 21, 2005, is encouraged. The University of Arkansas has a $75 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited, please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close

after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $80 payable to The University of Arkansas. If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the form below and submit along with a check or money order for $75 payable to the ''The University of Arkansas.'' Mail to: Institute of Food Science & Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.
Name: _____
Affiliation: _____
Mailing Address: _____
City: _____ State:_____
Zip Code: _____
Phone: ( ) _____
Fax: ( ) _____
E-mail: ( ) _____
Special Accommodations Required:

_____

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested at cost through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The FDA Southwest Regional Small Business Representative previously presented this workshop in Kansas City, MO on January 10 and 11, 2002 (66 FR 65976) and in Dallas, TX on April 14 and 15, 2002 (67 FR 15211).

This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Denver District Office. The Southwest Regional Small Business Representative presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Small Business Representative Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) health and nutrition claims, (4) FDA's allergen declaration policy, and (5) special labeling issues such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increase voluntary compliance.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2299 Filed 2–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Publication and Release of the National Response Plan

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice informs the public that the Department of Homeland Security (DHS) has developed and published the National Response Plan, which is now available to the public.

Authority: Homeland Security Act of 2002, Public Law 107–296; Homeland Security Presidential Directive -5, Management of Domestic Incidents.

FOR FURTHER INFORMATION CONTACT: National Response Plan: Bob Shea, Operational Integration Staff, DHS, Washington, DC 20528, 202–282–9651 or *Robert.shea@dhs.gov*.

National Incident Management System: Gil Jamieson, National Incident Management System Integration Center, DHS/FEMA, Washington, DC 20472, 202–646–4090, or *Gil.Jamieson@dhs.gov*.

SUPPLEMENTARY INFORMATION: Homeland Security Presidential Directive -5 required the Secretary of Homeland Security to develop and administer a National Incident Management System and a National Response Plan. The National Incident Management System (NIMS), released in March 2004, established a unified and standardized approach within the United States for protecting citizens and managing homeland security incidents. The National Response Plan standardizes Federal incident management actions by integrating existing and formerly distinct processes. Using the comprehensive framework of the NIMS, the National Response Plan provides the structure and mechanisms for the coordination of Federal support to State, local, and tribal incident managers and for exercising direct Federal authorities and responsibilities. It is applicable to all Federal departments and agencies that may be requested to provide assistance or conduct operations in the context of actual or potential incidents of national significance.

The purpose of the National Response Plan is to establish a comprehensive, national, all-hazards approach to domestic incident management across a spectrum of activities including prevention, preparedness, response, and recovery. The National Response Plan incorporates the best practices and procedures from various incident management disciplines—homeland security, emergency management, law enforcement, firefighting, hazardous materials response, public works, public health, emergency medical services, and responder and recovery worker health and safety—and integrates them into a unified coordinating structure. As such, it is intended to replace the Initial National Response Plan, the Federal Response Plan, the U.S. Government Domestic Terrorism Concept of Operations Plan, and the Federal Radiological Emergency Response Plan, all of which are currently in effect.

The National Response Plan represents a true ''national'' framework in terms of both product and process. The National Response Plan development process included extensive vetting and coordination with Federal, State, local, and tribal agencies, nongovernmental organizations, private-sector entities, and the first-responder and emergency management communities across the country. The activation of the National Response Plan and its coordinating structures and protocols—either partially or fully—for specific incidents of national significance provides mechanisms for the coordination and implementation of

a wide variety of incident management and emergency assistance activities. Included in these activities are Federal support to State, local, and tribal authorities; interaction with nongovernmental, private donor, and private-sector organizations; and the coordinated, direct exercise of Federal authorities, when appropriate.

The plan was approved by the Homeland Security Council and signed by 32 Federal departments and agencies, and nongovernmental organizations. The signatories are the Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Central Intelligence Agency, Environmental Protection Agency, Federal Bureau of Investigation, Federal Communications Commission, General Services Administration, National Aeronautic and Space Administration, National Transportation Safety Board, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, Social Security Administration, Tennessee Valley Authority, U.S. Agency for International Development, U.S. Postal Service, American Red Cross, Corporation for National and Community Service, and National Voluntary Organizations Active in Disaster.

Implementation of the National Response Plan commenced on December 15, 2004 per a memorandum from the Secretary of Homeland Security. Implementation will occur in three phases over the period of one year. During the first 120 days of the implementation process, the Initial National Response Plan, the Federal Response Plan, the U.S. Government Domestic Terrorism Concept of Operations Plan, and the Federal Radiological Emergency Response Plan remain in effect. After April 14, 2005, these plans are superseded by the National Response Plan. Detailed implementation guidance and schedules are identified in the Letter of Instruction in the base plan of the document.

This Notice informs the public of the release and availability of the National Response Plan. The National Response Plan is available on the Department of Homeland Security's Web site at *www.dhs.gov/nationalresponseplan.* A hard copy or CD–ROM of the National Response Plan may be obtained by calling 800–480–2520.

Dated: January 28, 2005.

Bob Stephan,

Special Assistant to the Secretary, Department of Homeland Security.

[FR Doc. 05–2259 Filed 2–4–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: March 3, 2005.

Place: Building J, Room 138, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Ambulance Safety Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes and Ambulance Safety Subcommittee reports; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. *See* the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Lee Wren, on or before Tuesday, March 1, 2005, via mail at NETC, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, or by telephone at (301) 447–1107, or via facsimile at (301) 447–1178, or via e-mail at *lee.wren@dhs.gov.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 3 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''885721#.''

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on June 2, 2005. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/fire-service/ems/ficems.shtm* within 30 days after their approval at the June 2, 2005, FICEMS Committee Meeting.

Dated: January 31, 2005.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 05–2258 Filed 2–4–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Applications for Incidental Take Permits for the Arnaudo Brothers, Wathen-Castanos, and River East Holding Sites in Merced County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: The Arnaudo Brothers, Wathen-Castanos, and River East Holding Sites (Applicants) have applied to the Fish and Wildlife Service (Service) for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing 10-year permits to the Applicants that would authorize take of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*, ''kit fox'') incidental to otherwise lawful activities associated with the residential and commercial development of four sites in Merced County, California. The projects would result in the incidental take of kit fox on the project sites through permanent removal of 182 acres of

habitat. Incidental take may also potentially occur during construction and ground disturbance activities, which may affect occupied dens and individual foxes.

We request comments from the public on the permit applications and the Environmental Assessment, both of which are available for review. The permit applications include the proposed Habitat Conservation Plan (HCP) and associated Implementing Agreement. The HCP describes the proposed action and the measures that the Applicants will undertake to minimize and mitigate, to the maximum extent practicable, take of the kit fox.

DATES: We must receive your written comments on or before March 9, 2005.

ADDRESSES: Please address written comments to Ms. Lori Rinek, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. You also may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek, Chief, Conservation Planning and Recovery Division, at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office [*see* **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection, by appointment, during normal business hours at the above address [*see* **ADDRESSES**] and at the following Web site: *http://www.harveyecology.com/*.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally-listed fish and wildlife is defined under the Act as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened species are found in 50 CFR 17.32.

The Applicants propose to develop 182 acres on 4 sites in the unincorporated community of Santa Nella in western Merced County, California: Arnaudo 1, Arnaudo 2, Wathen-Castanos, and River East. The Arnaudo 1 and 2 and Wathen-Castanos sites are situated west and east of State Route 33 respectively, and north of State Route 152. The O'Neill Forebay State Wildlife Area lies west of the Delta-Mendota Canal, which is located west of the project sites. To the south of the project sites, the Delta-Mendota Canal and California Aqueduct flow from west to east. The River East site, on which the proposed wastewater treatment facility would be located, is situated to the east of Interstate 5 and west of the Outside Canal. The proposed development would occur on undeveloped parcels within an area of existing residential and commercial development. The project sites contain, and are adjacent to, habitat suitable to support kit fox. Critical habitat for the kit fox has been neither designated nor proposed.

Kit foxes have historically been known to occur in the area of the proposed projects, and have been seen south and northwest of the project sites. At least 13 surveys for the kit fox have been conducted in the Santa Nella area, of which 5 determined kit fox to be present in the area. In 1992, a kit fox survey (conducted according to 1990 California Department of Fish and Game recommendations) was undertaken for the Santa Nella community; however, no kit foxes were detected. Kit foxes are known to occur south of the State Route 33/152 interchange. A female with pups was observed in 2004 along Billie Wright Road. Kit fox sightings and dens have also been reported in and around the proposed Los Banos Grandes Reservoir and the proposed Villages of Laguna San Luis project, both located south of the project sites. In the spring of 1998, a radio-collared kit fox was documented northwest of the Santa Nella community within the right-of-way along the Delta-Mendota Canal. Based on the results of these surveys and on other records, the Service has determined that the implementation of the proposed projects would likely result in take of kit fox through the permanent removal of 182 acres of habitat on the sites.

To mitigate for any take of kit fox on the project sites, the Applicants propose to preserve, and manage in perpetuity, a total of 447.9 acres of kit fox habitat. Within the Santa Nella community, the Applicants would establish movement corridors consisting of 39.8 acres along the Delta-Mendota Canal and 27.1 acres along the west side of the Outside Canal. In addition, a 5-acre refugium would be created north of the San Luis Wasteway and east of the Delta-Mendota Canal. The Applicants also propose to preserve in perpetuity 376 acres of off-site habitat, which would provide breeding and foraging areas for source populations located to the north and south of the Santa Nella community. The combination of on-site and off-site habitat preservation is intended to achieve the goal of protecting and maintaining habitat to facilitate population interchange between the core population to the south and northern kit fox populations, and to help ensure the survival of source populations.

In addition to habitat preservation and management, the Applicants propose to avoid and/or minimize the potential effect on kit foxes associated with pre-construction and construction activities through the adoption of various measures, including the Service's standardized recommendations for protection of the kit fox prior to and during ground disturbance activities. Furthermore, the Applicants have identified measures to avoid and minimize any potential indirect effects on kit foxes using preserved corridors adjacent to the proposed development. Such measures include leash laws, signage and fencing, night lighting standards, and pesticide and rodenticide restrictions.

The Service's Environmental Assessment evaluates the environmental consequences of four alternatives, including: (1) The Proposed Project Alternative, which involves the of issuance of incidental take permits and implementation of the proposed HCP; (2) the Reduced Density Alternative, which is identical to the Proposed Project Alternative, except that residential housing construction within the project sites would occur at half the density as that planned under the Proposed Project Alternative; (3) the 1999 Draft HCP Alternative, which involves the same level of development as the Proposed Project Alternative, but differs in the approaches proposed to address potential impacts to kit fox as a result of the development; and (4) the No Action Alternative, which presumes that no incidental take permits would be issued and that the proposed development would not proceed.

Although the Reduced Density Alternative does not differ from the Proposed Project Alternative with respect to the establishment of corridors and preservation of other conservation lands, the reduction in housing density would potentially result in the creation of small habitat patches, which could further adversely affect kit foxes. The 1999 Draft HCP Alternative, which proposes the preservation of off-site habitat only, would result in an inferior conservation outcome for kit fox than the Proposed Project Alternative because it would not lead to the permanent establishment of movement

corridors through the Santa Nella community. The Service considers movement corridors, which would facilitate population interchange between northern and southern kit fox populations, to be of critical importance to the survival of the species. The No Action Alternative would not provide for the long-term conservation of kit fox in the area because conservation lands and movement corridors would not be permanently established.

Pursuant to an order issued on June 10, 2004, by the District Court for the District of Columbia in *Spirit of the Sage Council* v. *Norton* Civil Action No. 98–1873 (D.D.C.), the Service is enjoined from issuing new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances, as defined by the Service's ''No Surprises'' rule published at 63 FR 8859 (February 23, 1998), until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedures Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the June 10, 2004, order has been rescinded or the Service's authority to issue permits with ''No Surprises'' assurances has been otherwise reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the kit fox. We will make our final permit decision no sooner than 30 days from the date of this notice.

Dated: January 28, 2005.

Mike Boylen,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–2250 Filed 2–4–05; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–501]

In the Matter of Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Decision to Review in its Entirety a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review in its entirety a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on November 18, 2004, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation; and (2) to extend the target date for completion in this investigation by thirty-seven (37) days, *i.e.*, until March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the public version of the IDs and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 19, 2003, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Amkor Technology, Inc. alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same in connection with claims 1–4, 7, 17, 18 and 20–23 of U.S. Patent No. 6,433,277 (''the '277 patent''); claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728 (''the '728 patent''); and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356 (''the '356 patent''). 68 FR 70836 (December 19, 2003). The complainant named Carsem (M) Sdn Bhd; Carsem Semiconductor Sdn Bhd; and Carsem, Inc. as respondents.

The evidentiary hearing in this investigation was held from July 6 through July 30, 2004, and August 9 through August 11, 2004. On November 18, 2004, the presiding ALJ issued a final ID finding no violation of section 337. All of the parties to the investigation, including the Commission investigative attorney filed timely petitions for review of various portions of the final ID. Respondents designated their petition to be contingent upon the granting of any other petition for review or upon the Commission's reviewing the ALJ's ID on its own motion pursuant to 19 CFR 210.44. All parties filed timely responses to the petitions for review.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety. At this time the Commission requests briefing, based on the evidentiary record, that concerns only the issue of claim interpretation. Further briefing may be requested at a later date. The Commission is particularly interested in receiving answers to the following questions:

1. Does the specification of the '277 patent satisfy the ''written description'' requirement of 35 U.S.C.112, ¶ 1 with respect to the claim limitations ''fully around a circumference of the die pad'' found in claims 2, 3, and 4, and ''fully around the die pad'' found in claims 21, 22, and 23?

2. How should the following claim limitations be construed:

(a) ''Fully around a circumference of the die pad'' ('277 patent, claims 2, 3, and 4);

(b) ''fully around the die pad'' ('277 patent, claims 21, 22, and 23);

(c) ''surrounding the second surface'' ('356 patent, claims 1 and 13);

(d) ''the side surface of the die pad includes a means around the circumference of the die pad for vertically locking,'' ('277 patent, claim 17)?

In particular, please address whether the claim limitations ''fully around a circumference of the die pad'' and ''fully around the die pad'' are indefinite.

3. How should the following claim terms of the '356 patent be construed:

(a) ''Horizontal peripheral third surface'' (claims 1, 13);

(b) ''vertical outer peripheral surface'' (claims 1, 13); and

(c) ''horizontal third surface'' (claim 1)?

4. How should the following claim limitations be construed:

(a) ''The second surface of the die pad is exposed in the plane of the first exterior surface of the package body'' ('277 patent, claim 18); and

(b) ''the second surface of each lead is exposed in a horizontal plane of a first exterior surface of the package'' ('356 patent, claims 1, 13)?

In particular, please address how plating affects whether ''the second surface of the die pad'' in claim 18 of the '277 patent and ''the second surface of each lead'' in claims 1 and 13 of the '356 patent are ''exposed.''

5. Do the preambles of claims 1 and 3 of the '728 patent constitute claim limitations? In particular, please address how the intrinsic evidence supports your position in light of the teachings of the Court of Appeals for the Federal Circuit.

Written Submissions: Submissions should be concise and thoroughly referenced to the record in this investigation. The written submissions must be filed no later than close of business on February 14, 2005. Reply submissions must be filed no later than the close of business on February 22, 2005. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–210.45 and 210.51 of the Commission's Rules of Practice and Procedure (19 CFR §§ 210.42–210.45 and 210.51).

By order of the Commission.
Issued: February 1, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2261 Filed 2–4–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

February 1, 2005.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by March 9, 2005. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor's Departmental Clearance Officer, Ira L. Mills at (202) 693–4122 (this is not a toll-free number); via e-mail at: *mills-ira@dol.gov*; or (202) 693–7755 (TTY). The State Planning Guidance may also be found at the Web site—*http://www.doleta.gov/usworkforce*.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses.)

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Planning Guidance and Instructions for Submission of the Strategic Five Year State Plan for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act.

OMB Number: 1205–0398.

Frequency: Every five years.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 59.

Number of Responses: 59.

Total Burden: 1,475.

Total Annualized Capital/Startup Cost): $ 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $ 0.

Description: All current WIA State Plans will expire June 30, 2005. It is unlikely that Congress will pass a reauthorized Workforce Investment Act (WIA) before that time. Therefore, the enclosed Proposed WIA Planning Guidance is designed to advise States about how to continue their WIA Title I and Wagner Peyser Act programs under Public Law 105–220.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–2441 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,518]

BASF Corporation, Freeport, TX; Notice of Revised Determination on Reconsideration

On January 12, 2005, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to the subject firm. The Notice will soon be published in the **Federal Register**.

The initial investigation found that workers are separately identifiable by product line (polycaprolactum, oxo, diols, and acrylic monomers), that polycaprolactum, oxo and diol production increased during the relevant period, and that the subject company neither increased imports of acrylic monomers during the relevant period nor shifted acrylic monomer production abroad.

The petitioner asserted in the request for reconsideration that the worker

separations at the subject firm were the result of a shift of production of acrylic monomers to China.

During the reconsideration investigation, it was found that workers are not separately identifiable by product line and that acrylic monomer production declined during the relevant period.

New information provided by the subject company revealed that company imports of acrylic monomer increased after the company shifted acrylic monomer production to China in 2004.

The investigation also revealed that all criteria have been met in regard to alternative trade adjustment assistance. A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that a shift of production to China followed by increased imports of acrylic monomers contributed importantly to worker separations at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of BASF Corporation, Freeport, Texas, who became totally or partially separated from employment on or after August 30, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 21st day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–459 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,594]

Bosch-Rexroth Corporation, Mobile Hydraulics Division, Wooster, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Bosch-Rexroth Corporation, Mobile Hydraulics Division, Wooster, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,594; Bosch-Rexroth Corporation, Mobile Hydraulics Division, Wooster, Ohio (January 25, 2005).

Signed at Washington, DC this 31st day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–454 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,799]

CDI Professional Services Workers at General Dynamics Land Systems, California Technical Center, Goleta, CA; Notice of Negative Determination on Reconsideration

On December 30, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's Notice was published in the **Federal Register** on January 21, 2005 (70 FR 3226).

The petition for the workers of CDI Professional Services, workers at General Dynamics Land Systems, California Technical Center, Goleta, California was terminated because the petitioning workers were covered by an earlier denial (TA–W–55,658) and no new information or change in circumstances was evident to warrant a reversal of the previous determination.

The petitioner contends that the Department erred in its determination and alleges that the workers support Saudi Arabia National Guard (SANG) turret production which shifted from Goleta, California to London, Canada.

A company official was contacted for clarification in regard to the nature of the work performed by the subject worker group. The official stated that the subject workers were engaged in the engineering, designing and repair of SANG turrets. SANG turrets are produced in Australia and then sent to Canada to be attached to the appropriate vehicle. The official further clarified that work related to the SANG turrets shifted from Goleta, California to Woodbridge, Virginia in 2004.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of CDI Professional Services working at General Dynamics Land Systems, California Technical Center, Goleta, California.

Signed at Washington, DC this 28th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–456 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,767]

Lenox, Inc., Oxford, NC; Notice of Revised Determination on Reconsideration

By letter dated December 9, 2004, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on November 9, 2004, based on the finding that petitioning workers did not produce an article within the relevant time period. The denial notice was published in the **Federal Register** on December 9, 2004 (69 FR 71428).

To support the request for reconsideration, the company official supplied additional information. Upon further review, it was revealed that the petitioning workers were members of the workforce that was certified eligible for TAA benefits, whose certification expired on October 11, 2004. The investigation revealed that petitioning workers remained employed at the subject facility after the stoppage of the production and beyond the date of the TAA certification for the purpose of completion of the transfer of the inventory and removal of the remaining equipment from the subject facility.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of

articles like or directly competitive with those produced at Lenox, Inc., Oxford, North Carolina, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Lenox, Inc., Oxford, North Carolina who became totally or partially separated from employment on or after October 11, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 18th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–460 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,059]

Louisiana Pacific Corporation, OSB-Woodland, Baileyville, ME; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated January 24, 2005, the state official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The negative determination was signed on January 10, 2005 and will be soon published in the **Federal Register**.

The workers of Louisiana Pacific Corporation, OSB-Woodland, Baileyville, Maine were certified eligible to apply for Trade Adjustment Assistance (TAA) on January 10, 2005.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The state official provided documentation with the request for reconsideration which contains evidence that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Louisiana Pacific Corporation, OSB-Woodland, Baileyville, Maine, who became totally or partially separated from employment on or after November 18, 2003 through January 10, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–457 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,104]

Pentair Pump, South Plant (Hydromatic), Subsidiary of Pentair, Inc., Ashland, OH; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance issued by the Department on January 7, 2005, applicable to all workers of Pentair Pump, South Plant (Hydromatic), Subsidiary of Pentair, Inc., Ashland, Ohio. The notice will soon be published in the **Federal Register**.

The Department, at the request of the State agency, reviewed the certification for workers of the subject firm engaged in the production of sump and sewage water pumps.

The State agency informed the Department that the worker group is covered by an existing certification, TA–W–51,215, that was issued on April 28, 2003. A review of the files shows that the petition certification for TA–W–51,215 was issued under the company name Hydromatic Pump in Ashland, Ohio, and remains in effect through April 28, 2005.

Since the workers are currently covered by a certification and are eligible to apply for trade adjustment assistance, the Department is terminating the certification for TA–W–56,104.

The petitioners are encouraged to file a new petition when the existing certification is nearing expiration.

Since the basis for the certification is no longer valid, continuation of this certification would serve no purpose and the certification for workers of Pentair Pump, South Plant (Hydromatic), Subsidiary of Pentair, Inc., Ashland, Ohio, has been terminated.

Signed at Washington, DC, this 21st day of January 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–458 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,742]

Rock-Tenn Company; OTSEGO, Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of December 14, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on November 8, 2004 and published in the **Federal Register** on December 9, 2004 (69 FR 71428).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information regarding subject firm's customers. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–462 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,691]

Royal Home Fashions Plant No. 6, Henderson, NC; Notice of Revised Determination on Reconsideration

By application of November 22, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on October 25, 2004 and published in the **Federal Register** on November 12, 2004 (69 FR 65462).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Royal Home Fashions, Plant No. 6, Henderson, North Carolina engaged in production of bedding (sheets, pillow cases, comforters, shams, etc.) was denied because it was determined that the declines in employment at the subject firm were predominantly caused by unrelated to imports circumstances.

The petitioner alleges that the petitioning group of workers was in direct support of the Royal Home Fashions manufacturing facilities known as Plant No. 4 and Plant No. 2 in Henderson, North Carolina. The workers of these facilities were certified eligible for TAA on July 15, 2004 and August 24, 2004 respectively.

A company official was contacted to verify whether workers at the subject facility were performing services for Plant No. 4 and Plant No. 2 during the relevant period. The company official stated that the subject facility serves as a distribution and warehousing facility and is in direct support of production for Plants No. 2 and No. 4 in Henderson, North Carolina.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers of Royal Home Fashions, Plant No. 6, Henderson, North Carolina.

The group eligibility criteria for the ATAA program that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

The Department has determined that criterion 2 has not been met. The investigation revealed that the work performed by the petitioning group are easily transferable to other positions in the commuting area.

Conclusion

After careful review of the facts obtained in the investigation, I determine that increases of imports of articles like or directly competitive with articles produced by Royal Home Fashions, Henderson, North Carolina contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of the Royal Home Fashions, Plant 6, Henderson, North Carolina who became totally or partially separated from employment on or after September 24, 2003 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–461 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of January 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act,

African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,156 & A; Spang and Co., Corporate Headquarters, Pittsburgh, PA and Magnetics, a div. of Spang and Company, Pittsburgh, PA

TA–W–56,120; Seneca Foods Corporation, Vegetables Div., Walla Walla, WA

TA–W–56,253; R.G. Barry Corporation, San Angelo, TX

TA–W–56,240; Dorby Frocks, New York, NY

TA–W–56,242; Lexington Precision Corp., Lexington Connector Seals, LaGrange, GA

TA–W–56,284; Hickory Manor House, Sparta, North Carolina Operation, Sparta, NC

TA–W–56,074; Klipstand Manufacturing Co., Inc., Westfield, MA

TA–W–55,880; Pitney Bowes, Inc., Stanford, CT

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,238; Westpoint Stevens Bed, Bath and Linen Outlet Store, a Div. of Westpoint Stevens Stores, Inc., Myrtle Beach, SC

TA–W–56,218; Veritest, a subsidiary of Lionbridge, Boise, ID

TA–W–56,193; Midwestern Telecommunications, Inc., Homewood, IL

TA–W–56,089; Netgear, Inc., Santa Clara, CA

TA–W–56,231; New DHC, Inc., including on-site leased workers of Combined Management, Inc., Bangor, ME

TA–W–56,183 & A; Sprint Corp., Sprint Business Solutions Div., Emerging and Mid-Markets, Tarboro, NC, Local Consumer Solutions, Rocky Mount, SC

TA–W–56,294; Marsh Advantage America, Spartanburg, SC

TA–W–56,209; Rocket Sales, Inc., Ridgewood, NY

TA–W–56,167; Cigna Healthcare, Service Operations, Chattanooga, TN

TA–W–56,287; Donnkenny Apparel, Inc., a subsidiary of Donnkenny, Inc., Wytheville, VA

TA–W–56,181; Aladdin Industries, LLC, Corporate Headquarters, Nashville, TN

TA–W–56,131; Independence Regional Health Center, Transcription Medical Records Div., a div. of HCA, Inc., Independence, MO

TA–W–56,036; Sprint/United Management Co., SCS Content Center, Bolingbrook, IL

TA–W–56,261; TAC Apparel, U.S. Operations Office, Weston, FL

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–56,112; Radisys, including leased workers of Employment Trends, Hillsboro, OR

TA–W–56,184; Johnstown Corporation, Johnstown, PA

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a country not under the free trade agreement with U.S.) have not been met.

TA–W–56,025; Rockwell Collins, In-Flight Entertainment Div., Pomona, CA

TA–W–56,142; Valenite LLC, Materials R&D, Troy, MI

TA–W–56,152 & A; Flowline Div., of Markovitz Enterprises, Inc., New Castle, PA and Whiteville, NC

The investigation revealed that criteria (a)(2)(A)(I.C) increased imports and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–56,154; J.R. Greene, Inc., Boonton, NJ

TA–W–56,255; Liz Claiborne, Inc., North Bergen, NJ

TA–W–56,174; Maryland Specialty Wire, Inc., Cockeysville, MD

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–56,108; Atlas Copco Compressors, Inc., Holyoke, MA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–56,001; Holophane Corp., Acuity Lighting Group, Newark, OH

TA–W–56,111; New Dana Perfumes Corp., Mountaintop, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–56,090; American Falcon Corporation, Auburn, ME: November 23, 2003.

TA–W–56,228; Hale Products, Inc., Conshohocken Div., Conshohocken, PA: December 16, 2003.

TA–W–56,163; Gateway Hosiery Mills, Inc., Chattanooga, TN: December 1, 2003.

TA–W–56,023; GDX North America, Inc., Wabash, IN: November 12, 2003.

TA–W–56,097; Foley Wood Products, Inc., including on-site leased workers of Snelling Personnel Service and Express Personnel Service, Ellsworth, WI: November 23, 2003.

TA–W–56,068; Metallic Ventures (US), Inc., a subsidiary of Metallic

Ventures Gold, Inc., Hawthorne, NV: November 15, 2003.

TA–W–56,071; Lambert Manufacturing Co., Inc., Glove Div., Plant 3, Chillicothe, MO: November 17, 2003.

TA–W–56,221; Tien-Hu Knitting Co. (US), Inc., Oakland, CA: December 7, 2003.

TA–W–56,232; CRH Catering Co., Inc., Workers at Anchor Glass Container Co, Connellsville, PA: December 16, 2003.

TA–W–56,211; Silkworm, Inc., Andrews, SC: December 13, 2003.

TA–W–56,073; Peake Plastics, Forest Hills, MD: November 23, 2003.

TA–W–56,091; Eagle Ottawa, LLC, Grand Haven Div., Grand Haven, MI: November 8, 2003.

TA–W–56,109; Bonifay Manufacturing, Inc., Bonifay, FL: November 30, 2003.

TA–W–56,060; HCP Packaging USA, Bridgeport, CT: November 19, 2003.

TA–W–56,150; Dicon Fiberoptics, Inc., Richmond, CA: November 22, 2003.

TA–W–56,172; Cooper-Atkins Corp., Gainesville, FL: December 6, 2003.

TA–W–56,113; Murray, Inc., Lawrenceburg, TN: November 15, 2003.

TA–W–56,132; Floyd Manufacturing Co., Inc., East Berlin, CT: November 15, 2003.

TA–W–56,054; Brown Manufacturing, Inc., Marion, North Carolina: November 15, 2003.

TA–W–56,077; EDA Staffing, Workers at Semiconductor Components Industries, LLC, a/k/a On Semiconductor, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,078; Additional Contract Services, Workers at Semiconductor Components Industries, LLC, a/k/a On Semiconductor, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,079; Olsten Professional Staffing, Workers at Semiconductor Components Industries, LLC, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,315; Hitachi Magnetics Corp., Edmore, MI: January 4, 2005.

TA–W–56,243; Hoffman Mills, Inc., Shippensburg, PA: December 16, 2003.

TA–W–56,263; Mount Vernon Mills, Inc., Johnston, SC: January 4, 2005.

TA–W–56,213; BMC Holding, Inc., Div. of Terra Industries, Beaumont, TX: November 30, 2003.

TA–W–56,196; Stern Rubber Co., Staples, MN: December 10, 2003.

TA–W–56,199; Tinnin Garment Co., Inc., Fredericktown, MO: December 13, 2003.

TA–W–56,206; Essilor of America, St. Petersburg, FL: December 6, 2003.

TA–W–56,057; Quaker Fabric Corporation, Plant C, Design Group, Fall River, MA: November 18, 2003.

TA–W–56,134; Tyco Electronics, Power Components (COEV) Div., Watertown, SD: December 2, 2003.

TA–W–56,175; New Time Garment Manufacturing, San Francisco, CA: December 6, 2003.

TA–W–56,192; Douglas Battery Manufacturing Co., including on-site leased workers of Temporary Resources, Adecco and CPI, Winston-Salem, NC: December 8, 2003.

TA–W–56,053; Gilman Engineering and Manufacturing Co. LLC, including on-site leased workers of Van Marter and Associates, inc., Advanced Project Services LLC, Techstaff of Milwaukee, Inc., Argus and Associates, Inc., and Hantech LLC, Janesville, WI: November 6, 2004.

TA–W–56,301; Diamond Products, St. Paul, MN: January 7, 2004.

TA–W–56,082; Cooper Tire and Rubber Co., Inner Tube Associates, Clarksdale, MS: November 23, 2003.

TA–W–56,062; Express Personnel, Workers at Cooper Standard Automotive, North American Sealing Systems, Griffin, GA: November 22, 2003.

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

TA–W–56,081; Starkey Laboratories, Glencoe, MN: September 12, 2004.

TA–W–56,220; ITW Shakeproof, Guttenberg, IA: December 14, 2003.

TA–W–56,128; UFE, Inc., River Falls Molding Div., River Falls, WI: November 3, 2003.

TA–W–56,203; Metalforming Technologies, Inc., Safety Systems Div., including on-site leased workers of Adecco, Burton, MI: December 9, 2003.

TA–W–56,188; Symbol Technologies, Inc., Operations Division, including on-site leased workers of Next Source, Bohemia, NY: November 10, 2003.

TA–W–56,178; Electrolux Home Products, St. Cloud, MN: December 7, 2003.

TA–W–56,137; Gates Corp., Hose and Connectors Div., Galesburg Facility, a subsidiary of Tomkins, PLC, Galesburg, IL: December 2, 2003.

TA–W–56,138 & A; Money's Foods U.S., Inc., Fennville, MI and Howe, IN: November 24, 2003.

TA–W–56,147; Innovex, Inc., including on-site leased workers of The Work Connection, Maple Plain, MN: December 2, 2003.

TA–W–56,158; Square D/Schneider Electric, Columbia, MO: January 4, 2005.

TA–W–56,162; Visteon Systems, LLC, 6MM Condenser Operations, Connersville, IN: December 10, 2003.

TA–W–56,168; AG Communication Systems, a div. of Lucent Technologies, Genoa, IL: December 3, 2003.

TA–W–56,101; Concord Fabrics, Inc., including on-site leased workers of Randstad Staffing, Milledgeville, GA: June 18, 2004.

TA–W–56,072; Fiberconn Assemblies, Inc, Lodan Totowa Div., a subsidiary of Emerson, Telephone Services, Inc., Totowa, NJ: November 19, 2003.

TA–W–56,104; Pentair Pump, South Plant (Hydromatic), subsidiary of Pentair, Inc., Ashland, OH: November 15, 2003.

TA–W–56,269; STS Weaving, LLC, St. Albans, VT: December 29, 2003.

TA–W–56,244; Children's Group, Inc., Magic Cabin Div., Viroqua, WI: December 16, 2003.

TA–W–56,245; Randstad North America, Workers at Schnadig Corp., 101–Cornelia Div., Cornelia, GA: December 20, 2003.

TA–W–56,212 & A; Keystone Restyling Products, Production Facility, Toledo, OH and Shipping/Receiving Warehouse, Toledo, OH: December 7, 2003.

TA–W–56,153; Bredero Shaw LLC, a subsidiary of Shawcor, Inc., including leased workers of ACO Employment, Clark Personnel and Longs, Theodore, AL: December 2, 2003.

TA–W–56,166; The Lilli Group, Inc., South Hackensack, NJ: December 6, 2003.

TA–W–56,197; Designer's Group International, Designer's Group, Inc., a div of Chippenhook, including on-site leased workers of Randstad Staffing and Staffing Consultants, North Stonington, CT: December 9, 2003.

TA–W–56,176; Spirit Manufacturing Co., Inc., Jonesboro, AR: December 7, 2003.

TA–W–56,198; Specialty Electronics, Inc., Landrum, SC: December 10, 2003.

TA–W–56,233; Celestica, San Jose, CA: December 6, 2003.

TA–W–56,136; Gretagmacbeth, LLC, Production/Assembly, New Windsor, NY: June 8, 2004.

TA–W–56,283; Service Manufacturing, Weslaco, TX: December 13, 2003.

TA–W–56,297; Dicey Mills, Inc., Shelby, NC: January 3, 2004.
TA–W–56,148; Ozark Electronics, Cullman Alabama, Inc., a subsidiary of Ozark Electronics Repair, Inc., including on-site leased workers of Cullman Employment Center, Cullman, AL: December 2003.
TA–W–56,059; Louisiana Pacific Corp., OSB–Woodland, Baileyville, ME: November 18, 2003.
TA–W–56,139; Interdynamics, Inc., Brooklyn, NY: December 3, 2003.
TA–W–56,217; Kyocera Wireless Corp., a subsidiary of Kyocera International, including leased workers of Manpower Staffing Services, San Diego, CA: December 12, 2003.

The following certifications have been issued.

The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,877; Electronic Data Systems, on-site leased workers at Maxtor Corporation, Longmont, CA: October 21, 2003.
TA–W–55,978; Shakespeare Co., LLC, Monofilament Div., Columbia, SC: November 5, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–56,082; Cooper Tire and Rubber Co., Inner Tube Associates, Clarksdale, MS
TA–W–56,301; Diamond Products, St. Paul, MN
TA–W–56,217; Kyocera Wireless Corp., a subsidiary of Kyocera International, including leased workers of Manpower Staffing Services, San Diego, CA
TA–W–56,139; Interdynamics, Inc., Brooklyn, NY
TA–W–56,059; Louisiana Pacific Corporation, OSB—Woodland, Baileyville, ME
TA–W–55,978; Shakespeare Co., LLC, Monofilament Div., Columbia, SC
TA–W–56,062; Express Personnel, Workers at Cooper Standard Automotive, North American Sealing Systems, Griffin, GA
TA–W–54,164; Maida Development Co., including leased workers of Integrity Staffing Services, Hampton, VA
TA–W–53,119; Orrco, Inc., Killbuck, OH
TA–W–52,909; Dolly, Inc., including leased workers of CBS Personnel and Express Personnel, Tipp City, OH
TA–W–54,033; Aluminum Color Industries, Inc., Lowellville, OH
TA–W–53,699; Tomlinson Industries, Cleveland, OH

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–56,148; Ozark Electronics Cullman Alabama, Inc., a subsidiary of Ozark Electronics Repair, Inc., including on-site leased workers of Cullman Employment Center, Cullman, AL

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–56,231; New DHC, Inc., including on-site leased workers of Combined Management, Inc., Bangor, ME
TA–W–56,183 & A; Sprint Corp., Sprint Business Solutions Div., Emerging and Mid-Markets, Tarboro, NC and Local Consumer Solutions, Rock Mount, NC
TA–W–56,294; Marsh Advantage America, Spartanburg, SC
TA–W–56,209; Rocket Sales, Inc., Ridgewood, NY
TA–W–56,167; Cigna Healthcare, Service Operations, Chattanooga, TN
TA–W–56,287; Donnkenny Apparel, Inc., a subsidiary of Donnkenny, Inc., Wytheville, VA
TA–W–56,181; Aladdin Industries, LLC, Corporate Headquarters, Nashville, TN
TA–W–56,131; Independence Regional Health Center, Transcription Medical Records Division, a Division of HCA, Inc., Independence, MO
TA–W–56,036; Sprint/United Management Co., SCS Content, Boilingbrook, IL
TA–W–56,261; TAC Apparel, U.S. Operations Office, Weston, FL
TA–W–56,156 & A; Spang and Company, Corporate Headquarters, Pittsburgh, PA and Magnetics, a Division of Spang and Company, Pittsburgh, PA
TA–W–56,120; Seneca Foods Corporation, Vegetables Division, Walla Walla, WA
TA–W–56,253; R.G. Barry Corp., San Angelo, TX
TA–W–56,240; Dorby Frocks, New York, NY
TA–W–56,242; Lexington Precision Corporation, Lexington Connector Seals, LaGrange, GA
TA–W–56,284; Hickory Manor House, Sparta, North Carolina Operation, Sparta, NC
TA–W–56,074; Klipstand Manufacturing Co., Inc., Westfield, MA
TA–W–55,889; Pitney Bowes, Inc., Stanford, CT
TA–W–56,112; Radisys, including leased workers of Employment Trends, Hillsboro, OR
TA–W–56,184; Johnstown Corporation, Johnstown, PA
TA–W–56,025; Rockwell Collins In-flight Entertainment Div., Pomona, CA
TA–W–56,142; Valenite LLC, Materials R&D, Troy, MI
TA–W–56,152 & A; Flowline Div. of Markovitz Enterprises, Inc., New Castle, PA and Whiteville, NC
TA–W–56,154; J.R. Greene, Inc., Boonton, NJ
TA–W–56,255; Liz Claiborne, Inc., North Bergen, NJ
TA–W–56,174; Maryland Specialty Wire, Inc., Cockeysville, MD
TA–W–56,001; Holophane Corporation, Acuity Lighting Group, Newark, OH
TA–W–56,111; New Dana Perfumes Corp., Mountaintop, PA
TA–W–56,108; Atlas Copco Compressors, Inc., Holyoke, MA

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

TA–W–56,090; American Falcon Corporation, Auburn, ME: November 23, 2003.

TA–W–56,228; Hale Products, Inc., Conshohocken Div., Conshohocken, PA: December 16, 2003.

TA–W–56,163; Gateway Hosiery Mills, Inc., Chattanooga, TN: December 1, 2003.

TA–W–56,023; GDX North America, Inc., Wabash, IN: November 12, 2003.

TA–W–56,097; Foley Wood Products, Inc., including on-site leased workers of Snelling Personnel Service and Express Personnel Service, Ellsworth, WI: November 23, 2003.

TA–W–56,068; Metallic Ventures (US), Inc., a subsidiary of Metallic Ventures Gold, Inc., Hawthorne, NV: November 15, 2003.

TA–W–56,071; Lambert Manufacturing Co., Inc., Glove Div., Plant 3, Chillicothe, MO: November 17, 2003.

TA–W–56,221; Tien-Hu Knitting Co. (US), Inc., Oakland, CA: December 7, 2003.

TA–W–56,232; CRH Catering Co., Inc., Workers at Anchor Glass Container Co, Connellsville, PA: December 16, 2003.

TA–W–56,211; Silkworm, Inc., Andrews, SC: December 13, 2003.

TA–W–56,073; Peake Plastics, Forest Hills, MD: November 23, 2003.

TA–W–56,091; Eagle Ottawa, LLC, Grand Haven Div., Grand Haven, MI: November 8, 2003.

TA–W–56,109; Bonifay Manufacturing, Inc., Bonifay, FL: November 30, 2003.

TA–W–56,060; HCP Packaging USA, Bridgeport, CT: November 19, 2003.

TA–W–56,150; Dicon Fiberoptics, Inc., Richmond, CA: November 22, 2003.

TA–W–56,172; Cooper-Atkins Corp., Gainesville, FL: December 6, 2003.

TA–W–56,113; Murray, Inc., Lawrenceburg, TN: November 15, 2003.

TA–W–56,132; Floyd Manufacturing Co., Inc., East Berlin, CT: November 15, 2003.

TA–W–56,054; Brown Manufacturing, Inc., Marion, North Carolina: November 15, 2003.

TA–W–56,077; EDA Staffing, Workers at Semiconductor Components Industries, LLC, a/k/a On Semiconductor, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,078; Additional Contract Services, Workers at Semiconductor Components Industries, LLC, a/k/a On Semiconductor, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,079; Olsten Professional Staffing, Workers at Semiconductor Components Industries, LLC, East Greenwich Div., East Greenwich, RI: November 18, 2003.

TA–W–56,315; Hitachi Magnetics Corp., Edmore, MI: January 4, 2005.

TA–W–56,243; Hoffman Mills, Inc., Shippensburg, PA: December 16, 2003.

TA–W–56,263; Mount Vernon Mills, Inc., Johnston, SC: January 4, 2005.

TA–W–56,213; BMC Holding, Inc., Div. of Terra Industries, Beaumont, TX: November 30, 2003.

TA–W–56,196; Stern Rubber Co., Staples, MN: December 10, 2003.

TA–W–56,199; Tinnin Garment Co., Inc., Fredericktown, MO: December 13, 2003.

TA–W–56,206; Essilor of America, St. Petersburg, FL: December 6, 2003.

TA–W–56,057; Quaker Fabric Corporation, Plant C, Design Group, Fall River, MA: November 18, 2003.

TA–W–56,134; Tyco Electronics, Power Components (COEV) Div., Watertown, SD: December 2, 2003.

TA–W–56,175; New Time Garment Manufacturing, San Francisco, CA: December 6, 2003.

TA–W–56,192; Douglas Battery Manufacturing Co., including on-site leased workers of Temporary Resources, Adecco and CPI, Winston-Salem, NC: December 8, 2003.

TA–W–56,053; Gilman Engineering and Manufacturing Co. LLC, including on-site leased workers of Van Marter and Associates, inc., Advanced Project Services LLC, Techstaff of Milwaukee, Inc., Argus and Associates, Inc., and Hantech LLC, Janesville, WI: November 6, 2004.

TA–W–56,178; Electrolux Home Products, St. Cloud, MN: December 7, 2003.

TA–W–56,137; Gates Corp., Hose and Connectors Div., Galesburg Facility, a subsidiary of Tomkins, PLC, Galesburg, IL: December 2, 2003.

TA–W–56,138 & A; Money's Foods U.S., Inc., Fennville, MI and Howe, IN: November 24, 2003.

TA–W–56,147; Innovex, Inc., including on-site leased workers of The Work Connection, Maple Plain, MN: December 2, 2003.

TA–W–56,158; Square D/Schneider Electric, Columbia, MO: January 4, 2005.

TA–W–56,162; Visteon Systems, LLC, 6MM Condenser Operations, Connersville, IN: December 10, 2003.

TA–W–56,168; AG Communication Systems, a div. of Lucent Technologies, Genoa, IL: December 3, 2003.

TA–W–56,101; Concord Fabrics, Inc., including on-site leased workers of Randstad Staffing, Milledgeville, GA: June 18, 2004.

TA–W–56,072; Fiberconn Assemblies, Inc., Lodan Totowa Div., a subsidiary of Emerson, Telephone Services, Inc., Totowa, NJ: November 19, 2003.

TA–W–56,104; Pentair Pump, South Plant (Hydromatic), subsidiary of Pentair, Inc., Ashland, OH: November 15, 2003.

TA–W–56,269; STS Weaving, LLC, St. Albans, VT: December 29, 2003.

TA–W–56,244; Children's Group, Inc., Magic Cabin Div., Viroqua, WI: December 16, 2003.

TA–W–56,245; Randstad North America, Workers at Schnadig Corp., 101–Cornelia Div., Cornelia, GA: December 20, 2003.

TA–W–56,212 & A; Keystone Restyling Products, Production Facility, Toledo, OH and Shipping/Receiving Warehouse, Toledo, OH: December 7, 2003.

TA–W–56,153; Bredero Shaw LLC, a subsidiary of Shawcor, Inc., including leased workers of ACO Employment, Clark Personnel and Longs, Theodore, AL: December 2, 2003.

TA–W–56,166; The Lilli Group, Inc., South Hackensack, NJ: December 6, 2003.

TA–W–56,197; Designer's Group International, Designer's Group, Inc., a div of Chippenhook, including on-site leased workers of Randstad Staffing and Staffing Consultants, North Stonington, CT: December 9, 2003.

TA–W–56,176; Spirit Manufacturing Co., Inc., Jonesboro, AR: December 7, 2003.

TA–W–56,198; Specialty Electronics, Inc., Landrum, SC: December 10, 2003.

TA–W–56,233; Celestica, San Jose, CA: December 6, 2003.

TA–W–56,136; Gretagmacbeth, LLC, Production/Assembly, New Windsor, NY: June 8, 2004.

TA–W–56,283; Service Manufacturing, Weslaco, TX: December 13, 2003.

TA–W–56,297; Dicey Mills, Inc., Shelby, NC: January 3, 2004.

TA–W–55,877; Electronic Data Systems, on-site leased workers at Maxtor Corp., Longmont, CA: October 21, 2003.

TA–W–55,314 & A; The Production Department, Confluence, PA and Gateway Sportswear Corp., a subsidiary of The Production Department, Confluence, PA: February 11, 2003 through March 26, 2006.

TA–W–52,443; Formica Corp., Evendale Facility, Cincinnati, OH: July 31, 2002 through August 8, 2005.
TA–W–52,072; Colson Associates, Inc., a div. of Colson Caster Corporation, Jonesboro, AR: June 16, 2002 through August 15, 2005.
TA–W–52,453; National Metal Abrasives, Inc., Wadsworth, OH: July 30, 2002 through September 3, 2005.
TA–W–53,264; Burlington House Finishing, a div. of Burlington House, Burlington, NC: October 10, 2002 through November 13, 2005.
TA–W–54,335; Fiber Industries, Inc., a subsidiary of Wellman, Inc., including leased workers of Pinnacle Staffing and BE&K, Charlotte, NC: February 10, 2003 through March 26, 2006.
TA–W–54,249; VF Jeanswear Limited Partnership, a subsidiary of VF Corp., Irvington, AL: February 12, 2003 through March 11, 2006.
TA–W–52,951; T&W Forge, Inc., div. of Durrell Corp., Alliance, OH: August 29, 2002.
TA–W–53,921; Pac-Tec, Inc., d/b/a Ray-O-Lite Pavement Markers & Palm-N-Turn, including leased workers of Diversivied Services Group, Heath, OH: December 19, 2002 through January 27, 2006.
TA–W–54,661; Gordon Garment, div. of AH Schreiber Co., Inc., Bristol, VA: March 23, 2003 through May 12, 2006.
TA–W–54,332; Springs Industries, Inc., Bedding Div., Lyman Finishing Plant, Lyman, SC: February 12, 2003 through March 24, 2006.
TA–W–53,183; Group Seven Systems, Inc., Lenoir, NC: October 3, 2002 through November 19, 2005.
TA–W–52,809; Janef, Inc. T/A Alperin Mayflower, Old Forge, PA: August 14, 2002 through October 3, 2005.
TA–W–52,340; RST&B Curtain and Drapery, Florence, SC: July 17, 2002 through August 6, 2005.
TA–W–53,227; Voith Paper, Voith Paper Service Southeast Div., Salisbury, NC: October 13, 2002 through November 5, 2005.
TA–W–52,349; Terry Apparel, a/k/a Mariana Apparel, Mariana, AR: July 18, 2002 through August 8, 2005.
TA–W–53,517; Howell Penncraft, Howell, MI: October 28, 2002 through December 8, 2005.
TA–W–53,096; H. Warshow and Sons, Inc., Milton, PA: September 17, 2002 through November 21, 2005.
TA–W–52,708; Carolina Pad and Paper, Charlotte, NC: August 25, 2002 through September 25, 2005.
TA–W–53,410; Nidec America Corp., ADF Div. Canton, MA: October 28, 2002 through December 4, 2005

I hereby certify that the aforementioned determinations were issued during the month of January 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Date: January 28, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–463 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,820A]

Thermal and Interior Vandalia Operations of Delphi Corporation, Vandalia, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Thermal and Interior, Vandalia Operations of Delphi Corporation, Vandalia, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,820A; Thermal and Interior, Vandalia Operations of Delphi Corporation, Vandalia, Ohio (January 31, 2005).

Signed at Washington, DC this 31st day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–455 Filed 2–4–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05—018]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. With this collection NASA tracks all inventions that are disclosed by grant recipients.

Information is required to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. The requirement is codified in 14 CFR 1260.28. The legislative authorities are 43 U.S.C. 2451 *et seq.*, and 35 U.S.C. 200 *et seq.*

Grant provisions require that recipients include a list of all inventions required to be disclosed in their annual Performance Report.

II. Method of Collection

NASA utilizes paper and electronic methods to collect information from collection respondents.

III. Data

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700–0048.

Type of review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions; Business or other for-profit; State, local, or tribal government.

Estimated Number of Respondents: 8128.

Estimated Time Per Response: ranges from 1/3 hour to 8 hours per response.

Estimated Total Annual Burden Hours: 15,137.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: January 31, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–2294 Filed 2–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–019]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to help NASA to assess the services provided by its procurement offices.

The NASA Procurement Customer Survey is used to determine whether NASA's Procurement Offices are providing an acceptable level of service to the business/educational community, and if not, which areas need improvement.

Respondents will be business concerns and educational institutions that have been awarded a NASA procurement, or are interested in receiving such an award.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: NASA Procurement Customer Survey.

OMB Number: 2700–0101.

Type of review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 1000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: January 31, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–2295 Filed 2–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–017]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. This information is required to monitor contract compliance in support of NASA's mission and in response to procurement requirements.

Collection of the information ensures proper use and disposition of rights in inventions and data developed under NASA contracts. Legal requirements for collection are set forth in 42 U.S.C. 2457, *et seq.*, and 35 U.S. C. 200, *et seq.*, Collection is prescribed in the NASA Federal Acquisition Regulation Supplement, Part 1827, Patents, Data and Copyrights (48 CFR Part 1827).

The information is used by NASA legal and contracting offices to ensure disposition of inventions in accordance with statues and to determine the Government's rights in data.

II. Method of Collection

NASA utilizes paper and electronic methods to collect information from collection respondents.

III. Data

Title: NASA FAR Supplement, Part 1827, Patents, Data, & Copyrights.

OMB Number: 2700–0052.

Type of review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local, or tribal government .

Estimated Number of Respondents: 2351.

Estimated Time Per Response: Ranges from 1/2 hour to 8 hours per response.

Estimated Total Annual Burden Hours: 8,603.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: January 31, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–2302 Filed 2–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 62726, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Proposal Review Process.

OMB Control No.: 3145–0060.

Proposed Project Proposal Evaluation Process

The National Science Foundation (NSF) is an independent Federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75). The Act states the purpose of the NSF is ''to promote the progress of science; [and] to advance the national health, prosperity, and welfare'' by supporting research and education in all fields of science and engineering.''

From those first days, NSF has had a unique place in the Federal Government: It is responsible for the overall health of science and engineering across all disciplines. In contrast, other Federal agencies support research focused on specific missions such as health or defense. The Foundation also is committed to ensuring the nation's supply of scientists, engineers, and science and engineering educators.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. It does this through grants and cooperative agreements to more than 2,000 colleges, universities, K–12 school systems, businesses, informal science organizations and other research institutions throughout the U.S. The Foundation accounts for about one-fourth of Federal support to academic institutions for basic research.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and to other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals, the counsel of these merit reviewers has proven invaluable to the Foundation in the identification of meritorious projects.

Review of proposals may involve large panel sessions, small groups, use of individuals, ad hoc ''mail reviews'' by three or more reviewers, or some combination of these peer review methods. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About 50% are reviewed exclusively by panels of reviewers who gather, usually in Arlington, VA, to discuss their advice as well as to deliver it. About 35% are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or sub-fields. Finally, about 15% are reviewed exclusively by mail.

Use of the Information

The information collected on the proposal evaluation forms is used by the Foundation in applying the following criteria when awarding or declining proposals submitted to the Agency: (1) What is the intellectual merit of the proposed activity? (2) What are the broader impacts of the proposed activity?

The information collected on reviewer background questionnaire (NSF 428A) is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

Confidentiality

When a decision has been made (whether an award or a declination), verbatim copies of reviews, excluding the identities of the reviewers, and summaries of review panel deliberations, if any, are provided to the PI. A proposer also may request and obtain any other releasable material in NSF's file on his or her proposal. Everything in the file except information that directly identifies either reviewers or other pending or declined proposals is usually releasable to the proposer.

While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released.

The Foundation collects information regarding race, ethnicity, disability, and gender, as noted above. The FOIA and the Privacy Act protect this information from public disclosure.

Burden on the Public

The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of 6.3 reviews, with a minimum requirement of three reviews.

Dated: February 2, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–2301 Filed 2–4–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27 issued to Nuclear Management Company (the licensee) for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in Two Rivers, Wisconsin.

The proposed amendment would revise the Point Beach Nuclear Plant (PBNP), Units 1 and 2, Updated Final Safety Analysis Report to reflect the Commission staff's approval of the WCAP–14439–P, Revision 2 analysis entitled, ''Technical Justification for Eliminating Large Primary Loop Pipe Rupture as the Structural Design Basis for the Point Beach Nuclear Plant Units 1 and 2 for the Power Uprate and License Renewal Program.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of PBNP in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change revises the analysis supporting the PBNP dynamic effects design basis for primary loop piping. The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with safety analysis assumptions and resultant consequences. Therefore, it is concluded that this change does not significantly increase the probability of occurrence of an accident previously evaluated.

2. Operation of PBNP in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed change revises the analysis supporting the PBNP dynamic effects design basis for primary loop piping. The changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of PBNP in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The proposed change revises the analysis supporting the PBNP dynamic effects design basis for primary loop piping. All the recommended margins regarding leak-before-break conditions (margin on leak rate, margin on flaw size, and margin on loads) are satisfied for the primary loop piping. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The setpoints at which protective actions are initiated are not altered by the proposed changes. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest.

The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be

transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated November 5, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of January 2005.

For the Nuclear Regulatory Commission.

Deirdre W. Spaulding,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–2242 Filed 2–4–05; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–07001, Certificate No. GDP–1, EA–04–123]

United States Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY; Confirmatory Order Modifying License (Effective Immediately)

The United States Enrichment Corporation (USEC or Corporation) is the holder of NRC Certificate of Compliance No. GDP–1 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 76. The certificate authorizes USEC to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the Certificate of Compliance. The certificate was issued November 26, 1996, was most recently amended on June 30, 2004, and is due to expire on December 31, 2008.

On December 16, 2002, the NRC's Office of Investigations (OI) started an investigation to determine whether a Quality Control (QC) Manager at USEC's Paducah Gaseous Diffusion Plant (PGDP) was discriminated against by being suspended and later terminated for raising safety concerns. On May 12, 2003, OI expanded its investigation to determine whether the same QC Manager was discriminated against, in retaliation for the previously raised safety concerns, by not being considered for a position with a contractor performing work for USEC at PGDP. OI, in OI report No. 3–2002–040, did not substantiate that the QC Manager was suspended or terminated because of raising safety concerns. However, based on the facts and circumstances described in OI Report Number 3–2002–040, the NRC was concerned that the former QC Manager may have been discriminated against by not being considered for a contract position. By letter dated September 29, 2004, the NRC identified to USEC the NRC's concern. The September 29th letter offered USEC the opportunity either to attend a predecisional enforcement conference (PEC) or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and USEC and, if possible, assist the NRC and USEC in reaching an agreement on resolving the concern. USEC chose to participate in ADR. On November 22, 2004, the NRC and USEC met at USEC headquarters in Bethesda, Maryland in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution.

By letter dated December 6, 2004, USEC enumerated the actions it has already taken and additional actions it agreed to take in order to enhance its Safety Conscious Work Environment at the PGDP. The agreed-upon additional actions noted in Section IV of this Confirmatory Order focus on Safety Conscious Work Environment training for managers of USEC contractors at the PGDP and USEC managers who are principal points of contact for USEC contractors at the PGDP.

On January 24, 2005, USEC consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. USEC further agreed in its January 24, 2005, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through effective implementation of USEC's commitments.

I find that USEC's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that USEC's commitments be confirmed by this Order. Based on the above and USEC's consent, this Order is immediately effective upon issuance. USEC is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, 186 and 1710 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 76, it is hereby ordered, effective immediately, that Certificate of Compliance No. GDP–1 is modified as follows:

1. By no later than March 31, 2005, USEC shall develop and conduct initial Safety Conscious Work Environment training for: (a) Managers of USEC contractors at the PGDP; and (b) USEC personnel who are principal points of contact for USEC contractors at the PGDP.

2. By no later than June 30, 2005, USEC shall develop Safety Conscious Work Environment refresher training for the managers of USEC contractors at the PGDP and revise its training program requirements to conduct on-going refresher training at a frequency consistent with USEC's General Employee Training at the PGDP.

3. By no later than June 30, 2005, USEC shall revise its training program requirements to conduct initial Safety Conscious Work Environment training for: (a) New managers of USEC contractors at the PGDP; and (b) USEC personnel who become principal points of contact for USEC contractors at the PGDP, within ninety day of their assumption of these duties.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by USEC of good cause.

Any person adversely affected by this Confirmatory Order, other than the Certificate holder, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a

statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia, 30303–8931, and to the Certificate Holder. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 27th day of January 2005.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 05–2243 Filed 2–4–05; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17541]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Exxonmobil Biomedical Sciences, Inc.'s Facility in Annandale, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by email: *EXU@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Exxonmobil Biomedical Sciences, Inc. for Materials License No. 29–19396–01, to authorize release of its facility in Annandale, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Annandale, New Jersey facility for unrestricted use. Exxonmobil Biomedical Sciences, Inc. was authorized by NRC from December 14, 1999, to use radioactive materials for research and development purposes at the site. On October 25, 2004, Exxonmobil Biomedical Sciences, Inc. requested that NRC release the facility for unrestricted use. Exxonmobil Biomedical Sciences, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Exxonmobil Biomedical Sciences, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Exxonmobil Biomedical Sciences, Inc.''s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment Related to an Amendment of U.S. Nuclear Regulatory Commission Materials License No. 29–19396–01 ML050280058; and the Radiological Decommissioning Report, ExxonMobil Biomedical Sciences, Inc., 1545 Route 22 East, Annandale, New Jersey, October 24, 2004 (ML043100336). Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from

the ADAMS database accessible through the ADAMS web site. Interested members of the public may obtain copies of the reference documents for review and or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, Maryland, and can be contacted at (800) 397–4209 or (301) 415–4737, or by email to *pdr@nrc.gov*. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at King of Prussia, Pennsylvania, this 28th day of January, 2005.

For the Nuclear Regulatory Commission.

James Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 05–2244 Filed 2–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 157th meeting on February 23–25, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 8, 2004 (69 FR 71084).

The schedule for this meeting is as follows:

Wednesday, February 23, 2005

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The ACNW Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–11:20 a.m.: ACNW 2005 Action Plan (Open)—The ACNW Committee will discuss changes to the 2005 Action Plan resulting from COMSECY–04–0077, dated January 19, 2005.

11:20 a.m.–12:20 p.m.: Time-of-Compliance for a Proposed High-Level Waste (HLW) Repository (Open)—The Committee will continue its discussions on time-of-compliance for a proposed HLW and determine the need and timing of a possible Working Group Meeting on this subject.

1:20 p.m.–3 p.m.: Low-Level Radioactive Waste (LLW) Issues (Open)—The Committee will be briefed by the Chairman on the current status of LLW management in the U.S. and LLW issues faced by the industry, regulators and stakeholders.

3 p.m.–5:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the proposed presentation topics for its meeting with the NRC Commissioners, which is scheduled to be held between 9:30 a.m. and 11:30 a.m. on Wednesday, March 16, 2005.

Thursday, February 24, 2005

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:25 a.m.: Status of High-Significance Agreements Associated with the Proposed High-Level Waste Repository (Open)—The Committee will be briefed by an NRC representative on the status of high-significance agreements between NRC and DOE concerning the proposed HLW repository at Yucca Mountain.

9:25 a.m.–10:15 a.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on the Agreement State Program and Resolution of High-Significance Agreements.

10:30 a.m.–12 Noon: Discussion with Commissioner Merrifield (Open)—The Committee will interact with Commissioner Merrifield on areas of mutual interest in the waste management area.

1 p.m.–5:30 p.m.: Center for Nuclear Waste Regulatory Analyses (CNWRA) Report—Accomplishments and Future Projects (Open)—The Committee will be briefed by NMSS and the CNWRA representatives regarding recent technical accomplishments and future project plans of NRC's technical assistance contractor.

Friday, February 25, 2005

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:45 a.m.: Preparation of ACNW Reports (Open)—The Committee will continue its discussion of proposed ACNW reports on the Agreement State Program and Resolution of High-Significance Agreements.

9:45 a.m.–12 Noon: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include forthcoming meeting with Commissioners (Agenda Item #5).

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Michael P. Lee, (Telephone 301–415–6887), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Lee as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Lee.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The

availability of video teleconferencing services is not guaranteed.

Dated: February 1, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–2245 Filed 2–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

The 519th ACRS meeting scheduled to be held for three days, February 10–12, 2005, has been changed to a two-day meeting, February 10–11, 2005. The agenda for the meeting on Thursday, February 10, 2005 has been modified as noted below.

- The discussion of Waterford Nuclear Plant power uprate, previously scheduled between 8:35 and 10:30 a.m., is now scheduled between 8:35 and 12 noon.
- The item on Technical Basis for Potential Revision of the Pressurized Thermal Shock (PTS) Screening Criteria in the PTS Rule, scheduled between 10:45 and 12:30 p.m., has been postponed to a future ACRS meeting due to the unavailability of draft NUREG document being prepared by the NRC staff.
- The Mixed Oxide Fuel Fabrication Facility discussion scheduled between 1:30 and 4:30 p.m., is now scheduled between 1 and 4 p.m.

All the other items remain the same as previously published in the **Federal Register** on Monday, January 24, 2005 (70 FR 3399).

For further information, contact Mr. Sam Duraiswamy (telephone 301–415–7364), between 7:30 a.m. and 4:15 p.m., e.d.t.

Dated: February 1, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–2241 Filed 2–4–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Wednesday, February 16, 2005; and 8:30 a.m., Thursday, February 17, 2005.

PLACE: Sarasota, Florida, at the Ritz-Carlton Hotel, 1111 Ritz-Carlton Drive, in the Plaza III and IV Ballroom.

STATUS: February 16—1 p.m. (Closed); February 17—8:30 a.m. (Open);

MATTERS TO BE CONSIDERED:

Wednesday, February 16—1 p.m. (Closed)

1. Financial Update.
2. Postal Rate Commission Opinion and Recommended Decision in Negotiated Service Agreement (NSA) with Bank One Corporation, Docket No. MC2004–3.
3. Filing with the Postal Rate Commission for a Negotiated Service Agreement.
4. Rate Case Planning.
5. Strategic Planning.
6. Personnel Matters and Compensation Issues.

Thursday, February 17—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 11, 2005.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Appointment of Members to Board Committees and Committee Report.
4. Capital Investment.
   a. Atlantic City, New Jersey, Main Post Office.
5. Quarterly Report on Financial Performance.
6. Report on the Southeast Areas and Suncoast District.
7. Tentative Agenda for the April 12, 2005, meeting in Washington, DC.

FOR MORE INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC. 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 05–2466 Filed 2–3–05; 3:46 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51108; File No. 4–429]

Joint Industry Plan; Notice of Summary Effectiveness on a Temporary Basis of Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Limitation in Liability for Filling Satisfaction Orders Sent Through the Linkage at the End of the Trading Day, and Notice of Filing of Such Amendment

January 31, 2005.

I. Introduction

On January 28, 2005, January 31, 2005, January 26, 2005, January 27, 2005, January 28, 2005, and January 28, 2005, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange (''ISE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] an amendment (''Joint Amendment No. 14'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 14, the Participants propose to extend the pilot provision limiting Trade-Through[4] liability at the end of the trading day for an additional year, until January 31, 2006, and to increase the limitation on liability from 25 contracts to 50 contracts. This order summarily puts into effect Joint Amendment No. 14 on a temporary basis not to exceed 120 days, and solicits comment on Joint Amendment No. 14 from interested persons.[5]

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, January 29, 2004, June 15, 2004, June 17, 2004, July 2, 2004, and October 19, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004); 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004); 49885 (June 17, 2004), 69 FR 35397 (June 24, 2004); 49969 (July 2, 2004), 69 FR 41863 (July 12, 2004); and 50561 (October 19, 2004), 69 FR 62920 (October 28, 2004).

[4] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid and offer. *See* Section 2(29) of the Linkage Plan.

[5] A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. *See* 17 CFR 240.11Aa3–2(c)(4).

II. Description of the Proposed Amendment

In Joint Amendment No 14, the Participants propose to extend the pilot contained in Section 8(c)(ii)(B)(2)(b) of the Linkage Plan, which limits Trade-Through liability at the end of the trading day for an additional year, until January 31, 2006, and to increase the limitation on liability from 25 contracts to 50 contracts, per Satisfaction Order.[6] The proposed increase in the limit on liability would become effective on February 1, 2005, when the current pilot expires. Pursuant to the pilot as currently in effect, the Trade-Through liability of a member of a Participant is limited to 25 contracts per Satisfaction Order for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

III. Discussion

When the Participants proposed Joint Amendment No. 4 to the Linkage Plan,[7] the Participants represented to the Commission that their members had expressed concerns regarding their obligations to fill Satisfaction Orders (which may be sent by a Participant's member that is traded through) at the close of trading in the underlying security. Specifically, the Participants represented that their members were concerned that they may not have sufficient time to hedge the positions they acquire.[8] The Participants stated that they believed that their proposal to limit liability at the end of the options trading day to the filling of 10 contracts per exchange, per transaction would protect small customer orders, but still establish a reasonable limit for their members' liability. The Participants further represented that the proposal should not affect a member's potential liability under an exchange disciplinary rule for engaging in a pattern or practice of trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

The Commission approved the proposed amendment for a one-year pilot[9] to give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for Trade-Throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for Trade-Throughs near the end of the trading day leads to an increase in the number of Trade-Throughs.

In the order approving Joint Amendment No. 4, the Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (''Report'').[10] The Commission specified that the Report should include information about the number and size of Trade-Throughs that occur during the last seven minutes of the equity options trading day and during the remainder of the trading day, the number and size of Satisfaction Orders that Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions.[11] In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitation on Trade-Through liability permanent, they would submit the Report to the Commission no later than March 31, 2004.[12]

Following another extension of the pilot program, certain Participants provided the Commission with portions of the data required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate. The Commission extended the pilot program until January 31, 2005, to allow the limitation to continue in effect, with an increase in liability to 25 contracts, to enable the Participants to continue to gather and the Commission to evaluate the data relating to the effect of the operation of the pilot program.[13]

Since this last extension of the pilot program, the Participants have provided no additional data to the Commission to justify permanent approval of the limitation on liability. The Participants have represented that they are currently considering amendments to the Linkage Plan that, if proposed and approved, could obviate the need for the limitation on liability for Trade-Throughs at the end of the trading day. Specifically, the amendments the Participants are considering are intended to minimize the incidence of Trade-Throughs, and subsequently decrease the incidence of Satisfaction Orders. The Participants have represented that these amendments could be in effect within a year, and at that time, Participants would either allow the pilot program to lapse, or, if they believed that a continuation of the limitation was appropriate, would discuss that matter with the Commission staff. In this regard, the Commission notes that the Participants must submit sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate no later than 60 days prior to seeking permanent approval before the Commission will consider permanent approval of the pilot program.

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan seeking to extend the pilot provision limiting Trade-Through liability for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class for an additional year, and to increase the limitation on liability from 25 contracts to 50 contracts per Satisfaction Order, is consistent with the requirements of the Act and the rules and regulations thereunder.[14] Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act[15] and Rule 11Aa3–2 thereunder,[16] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that extending the pilot program and raising the limitation on liability to 50 contracts per Satisfaction Order will afford the Participants the opportunity to either

[6] A ''Satisfaction Order'' is defined as an order sent through the Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[7] *See* Securities Exchange Act Release Nos. 47028 (December 18, 2002), 67 FR 79171 (December 27, 2002) (Notice of Proposed Joint Amendment No. 4).

[8] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[9] *See* Securities Exchange Act Release Nos. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis); and 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot program twice, until June 30, 2004 and January 31, 2005, respectively. *See* Securities Exchange Act Release Nos. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8); and 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12).

[10] *See* Order approving Joint Amendment No. 4, *supra* note 9.

[11] *Id.*

[12] *See* Order approving Joint Amendment No. 8, *supra* note 9.

[13] *See* Order approving Joint Amendment No. 12, *supra* note 9.

[14] In approving this Joint Amendment No. 14, the Commission has considered its impact on efficiency, competition and capital formation.

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 240.11Aa3–2.

gather sufficient information to justify the need for the pilot program or determine that the exemption from Trade-Through liability is no longer necessary. The Commission believes that raising the limitation on liability to 50 contracts per Satisfaction Order will increase the average size of Satisfaction Order fills during the end of the options trading day, thereby enhancing customer order protection. In addition, the Commission finds, as described further below, that it is appropriate to put into effect summarily Joint Amendment No. 14 upon publication of this notice, on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets because it will allow the pilot to continue without interruption during the comment period.[17] Therefore, the Commission is extending the effectiveness of Section 8(c)(ii)(B)(2)(b) of the Linkage Plan on a temporary basis for 120 days, with the increase in the limitation in liability to 50 contracts per Satisfaction Order, for an additional year, until January 31, 2006.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Joint Amendment No. 14 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–429 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to proposed Joint Amendment No. 14 that are filed with the Commission, and all written communications relating to proposed Joint Amendment No. 14 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 4–429 and should be submitted on or before February 28, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [18] and Rule 11Aa3–2(c)(4) thereunder,[19] that Joint Amendment No. 14 is summarily put into effect until May 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–477 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.11Aa3–2(c)(4).

[18] 15 U.S.C. 78k–1.

[19] *See supra* note 17.

[20] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51109; File No. SR–Amex–2005–012]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Revision and Extension of the Limitation on Trade Through Liability at the End of the Trading Day Pilot Program

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On January 28, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through January 31, 2006 the current pilot program that limits an exchange member's trade-through liability to twenty-five (25) contracts per Satisfaction Order [7] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class (the ''Pilot Program''). In connection with the extension of the Pilot Program, the Exchange also proposes to increase the limit on trade-through liability at the end of the day from twenty-five (25) to fifty (50) contracts.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 the Exchange made certain technical corrections to Exhibit 5 to the filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Annex asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend the Pilot Program that limits trade-through liability at the end of the options trading day. Under the current Pilot Program, an Exchange member's trade-through liability is limited to twenty-five (25) contracts per Satisfaction Order received during the period between five (5) minutes prior to the close of trading in the underlying security and the close of trading in the options class. The Commission approved the Pilot Program on January 31, 2003.[8] The Commission has granted two (2) extensions of the Pilot Program, most recently through January 31, 2005.[9]

The proposed rule change, amending Amex Rule 942(a)(2)(ii)(B), will implement the substance of proposed Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'').[10] Joint Amendment No. 14 will amend Section 8(c)(ii)(B)(2)(b) of the Linkage Plan on a temporary basis so that the Linkage Pilot Program extends through January 31, 2006. In addition, Joint Amendment No. 14 also increases the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts. Accordingly, this proposed rule change will implement the changes proposed in Joint Amendment No. 14.

The option exchanges that are participants in the Linkage Plan (''Participants'') are currently considering amendments to the Linkage Plan that may make the need for this limitation of liability unnecessary. In particular, the amendments would increase the ability for members of the Participants to receive automatic execution of P/A Orders [11] and would provide tools to avoid trade-through liability generally, including at the end of the trading day. The Exchange anticipates that the amendments will be filed with the Commission in the near future. In the interim, the Amex believes that an extension of the Pilot Program is necessary until the new amendments have been filed, approved and implemented. This extension will allow the limitation to continue in effect, as amended, while the Commission staff and the Participants work on amendments to the Linkage Plan that would make this limitation of liability unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed rule change will enhance the national market system for options by extending and revising the Pilot Program, which limits the Exchange member's trade-through liability at the end of the trading day.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b-4(f)(6) [16] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[17] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[8] *See* Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003) (SR–Amex–2002–84).

[9] *See* Securities Exchange Act Release No. 49868 (June 15, 2004), 69 FR 35401 (June 24, 2004) (SR–Amex–2004–36).

[10] *See* Amendment No. 14 to the Linkage Plan filed by the Exchange on January 28, 2005 in a letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Jonathan G, Katz, Secretary, Commission, dated January 27, 2005.

[11] A Principal Acting as Agent (''P/A'') Order is an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. See Section 2(16)(a) of the Linkage Plan.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)

[15] 15 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or

• Send an e-mail to rule-comments@sec.gov. Please include File Number SR–Amex–2005–012 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR-Amex-2005–012 . This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–012 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–468 Filed 2–4–05; 8:45 am]

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51110; File No. SR–BSE–2005–08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Limitations on End-of-Day Trade-Through Liability on the Boston Options Exchange

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. On January 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program relating to certain limitations on trade-through liability. The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to conform Boston Options Exchange (''BOX'') rules to Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') to extend the linkage pilot program limiting trade-through liability at the end of the options trading day. Pursuant to the pilot as currently in effect, a BOX Options Participant's[7] trade-through liability is limited to 25 contracts per Satisfaction Order[8] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The Linkage Plan participants proposed this limitation on liability as a one-year pilot in Joint Amendment No. 4 to the Linkage Plan. The Commission temporarily approved the pilot on January 31, 2003,[9] followed by approval on June 18, 2003.[10] The Commission then granted two extensions of the pilot, first until June 30, 2004[11] and then until January 31, 2005.[12]

The Exchange is proposing to extend the pilot in BOX's Rules for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts per Satisfaction Order. This increase in the limit on liability would be effective on February 1, 2005, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment dated January 31, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected an error in Item 8 of Form 19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The BSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Section 1(40) of Chapter I of the BOX Rules.

[8] *See* Section 2(16)(c) of the Linkage Plan.

[9] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003).

[10] *See* Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003),

[11] *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[12] *See* Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004). This extension increased the maximum liability from 10 to 25 contracts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[18] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2005–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File SR–BSE–2005–08 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] *Id.*

[18] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 31, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(c)(3)(C).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51121; File No. SR-ISE–2005–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange, Inc. to Trade Options, Including LEAPS, on Full and Reduced Values of the Nasdaq 100 Index

February 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 18, 2005, the Exchange filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change.[3] On January 19, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to trade options on the full and reduced values of the Nasdaq 100 Index (''Index''). The Exchange also proposes to list and trade long-term options on full and reduced values of the Index. Options on the Index would be cash-settled and have European-style exercise provisions. The text of the proposed rule change is available on the ISE's website (*http://www.iseoptions.com*), at the ISE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style, index options on the full and reduced values of the Nasdaq 100 Index, a stock index calculated and maintained by The Nasdaq Stock Market, Inc. (''Nasdaq'').[5] Specifically, the Exchange proposes to list options based upon the full value of the Nasdaq 100 Index (''Full-size Nasdaq 100 Index'' or ''NDX'') as well as one-tenth of the value of the Nasdaq 100 Index (''Mini Nasdaq 100 Index'' or ''MNX'').[6] The Exchange also proposes to list long-term options based upon the full value of the Nasdaq 100 Index (''NDX LEAPS'') and one-tenth of the value of the Nasdaq 100 Index (''MNX LEAPS'').[7]

Index Design and Composition

The Nasdaq 100 Index, launched in January 1985, represents the largest non-financial domestic and international issues listed on Nasdaq based on market capitalization. The Index reflects companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade, and biotechnology.

The Index is calculated using a modified capitalization-weighted methodology. The value of the Index equals the aggregate value of the Index share weights, also known as the Depository Receipt Multiplier, of each of the component securities multiplied by each security's respective last sale price on Nasdaq or the Nasdaq Official Closing Price (''NOCP''), divided by Adjusted Base Period Market Value (''ABPMV''), and multiplied by the base value. The ABPMV serves the purpose of scaling such aggregate value (otherwise in the trillions) to a lower order of magnitude which is more desirable for Index reporting purposes. If trading in an Index security is halted while the market is open, the last Nasdaq traded price for that security is used for all index computations until trading resumes. If trading is halted before the market is open, the previous day's NOCP is used. Additionally, the Index is calculated without regard to any dividends on component securities. The methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, Nasdaq reviews the composition of the Index on a quarterly basis and adjusts the weighting of Index components using a proprietary algorithm, if certain pre-established weight distribution requirements are not met.

Nasdaq has certain eligibility requirements for inclusion in the Index.[8] For example, to be eligible for inclusion in the Index, a component security must be exclusively listed on the Nasdaq National Market, or dually listed on a national securities exchange prior to January 1, 2004.[9] Only one class of security per issuer is considered for inclusion in the Index.

Additionally, the issuer of a component security cannot be a financial or investment company and cannot currently be involved in bankruptcy proceedings. Criteria for inclusion also require the average daily trading volume of a component security to be at least 200,000 shares on Nasdaq. If a component security is of a foreign issuer, based on its country of incorporation, it must have listed options or be eligible for listed-options trading. In addition, the issuer of a component security must not have entered into any definitive agreement or other arrangement which would result in the security no longer being eligible for inclusion in the Index within the next six months. An issuer of a component security also must not have annual financial statements with an audit opinion where the auditor or the issuer has indicated that the audit opinion cannot be currently relied upon.

As of September 21, 2004, the following were characteristics of the Index:

○ The total capitalization of all components of the Index was $1.693 trillion;

○ Regarding component capitalization, (a) the highest capitalization of a component was $296.39 billion (Microsoft Corp.), (b) the lowest capitalization of a component was $1.48 billion (First Health Group Corp.), (c) the mean capitalization of the components was $16.93 billion, and (d) the median capitalization of the components was $6.34 billion;

○ Regarding component price per share, (a) the highest price per share of a component was $90.65 (eBay, Inc.), (b) the lowest price per share of a component was $2.68 (Level 3 Communications, Inc.), (c) the mean price per share of the components was

[3] Amendment No. 1 was a partial amendment that modified the proposed index hedge exemption for options on the Nasdaq 100 Index. A conforming change was proposed to the contract specifications in the filing.

[4] Amendment No. 2 replaced Amendment No. 1 in its entirety. In Amendment No. 2, the ISE again revised the proposed hedge exemption.

[5] A description of the Index is available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm.*

[6] Options on NDX and MNX are currently listed for trading on the Chicago Board Options Exchange (''CBOE''). Options on NDX and MNX listed on the Exchange would be identical to the NDX and MNX options listed on CBOE.

[7] Under ISE Rule 2009(b), ''Long-Term Index Options Series,'' the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

[8] The initial eligibility criteria and continued eligibility criteria are available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm.*

[9] In the case of spin-offs, the operating history of the spin-off would be considered. Additionally, if a component security would otherwise qualify to be in the top 25% of securities included in the Index by market capitalization for the six prior consecutive months, it would be eligible if it had been listed for one year.

$35.00, and (d) the median price per share of the components was $29.95;

○ Regarding component weightings, (a) the highest weighting of a component was 8.73% (Microsoft Corp.), (b) the lowest weighting of a component was 0.10% (Compuware Corp.), (c) the mean weighting of the components was 1.00%, (d) the median weighting of the components was 0.52%, and (e) the total weighting of the top five highest weighted components was 27.30% (Microsoft Corp., Qualcomm, Inc., Cisco Systems, Inc., Intel Corp., and eBay, Inc.);

○ Regarding component available shares, (a) the most available shares of a component was 10.86 billion shares (Microsoft Corp.), (b) the least available shares of a component was 43.74 million shares (Henry Schein, Inc.), (c) the mean available shares of the components was 675.31 million shares, and (d) the median available shares of the components was 250.05 million shares;

○ Regarding the six-month average daily volumes of the components, (a) the highest six-month average daily volume of a component was 64.62 million shares (Microsoft Corp.), (b) the lowest six-month average daily volume of a component was 348,583 shares (Ryanair Holdings PLC), (c) the mean six-month average daily volume of the components was 7.14 million shares, (d) the median six-month average daily volume of the components was 3.05 million shares, (e) the average of six-month average daily volumes of the five most heavily traded components was 260.46 million shares (Microsoft Corp., Intel Corp., Cisco Systems, Inc., Oracle Corp., and Sun Microsystems, Inc.), and (f) 100% of the components had a six-month average daily volume of at least 50,000; and

○ Regarding option eligibility, (a) 99.3% of the components were options eligible, as measured by weighting, and (b) 96.0% of the components were options eligible, as measured by number.

Index Calculation and Index Maintenance

In recent years, the value of the Full-size Nasdaq 100 Index has increased significantly, such that the value of the Index stood at 804.64, as of October 7, 2002. As a result, the premium for the Full-size Nasdaq 100 Index options also has increased. The Exchange believes that this has caused Full-size Nasdaq 100 Index options to trade at a level that may be uncomfortably high for retail investors. The Exchange believes that listing options on reduced values would attract a greater source of customer business than if the options were based only on the full value of the Index. The Exchange further believes that listing options on reduced values would provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the Index. Additionally, by reducing the values of the Index, investors would be able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors and, in turn, create a more active and liquid trading environment.[10]

The Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index levels are calculated continuously, using the last sale price for each component stock in the Index, and are disseminated every 15 seconds throughout the trading day.[11] The Full-size Nasdaq-100 Index level equals the current market value of component stocks multiplied by 125 and then divided by the stocks' market value of the adjusted base period. The adjusted base period market value is determined by multiplying the current market value after adjustments times the previous base period market value and then dividing that result by the current market value before adjustments. To calculate the value of the Mini Nasdaq 100 Index, the full value of the Index is divided by ten. To maintain continuity for the Index's value, the divisor is adjusted periodically to reflect events such as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, or other capitalization changes.

The settlement values for purposes of settling both Full-size Nasdaq 100 Index (''Full-size Settlement Value'') and Mini Nasdaq 100 Index (''Mini Settlement Value'') are calculated based on a volume-weighted average of prices reported in the first five minutes of trading for each of the component securities on the last business day before the expiration date (''Settlement Day'').[12] The Settlement Day is normally the Friday preceding ''Expiration Saturday.''[13] If a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day would be used to calculate both the Full-size Settlement Value and Mini Settlement Value.[14] Accordingly, trading in options on the Index will normally cease on the Thursday preceding an Expiration Saturday.

Nasdaq monitors and maintains the Index. Nasdaq is responsible for making all necessary adjustments to the Index to reflect component deletions; share changes; stock splits; stock dividends; stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components; and other corporate actions. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components.

The component securities are evaluated on an annual basis, except under extraordinary circumstances which may result in an interim evaluation, as follows: Securities listed on Nasdaq that meet its eligibility criteria are ranked by market value using closing prices as of the end of October and publicly available total shares outstanding as of the end of November. Eligible component securities which are already in the Index and ranked in the top 100 (based on market value) are retained in the Index. Component securities that are ranked from 101 to 150 are also retained provided that each such component security was ranked in the top 100 during the previous ranking review. Components that do not meet these criteria are replaced. The replacement securities chosen are those Index-eligible securities that have the largest market capitalization and are not currently in the Index.

The list of annual additions and deletions to the Index is publicly announced in early December. Changes to the Index are made effective after the close of trading on the third Friday in December. If at any time during the year a component security no longer trades on Nasdaq, or is otherwise determined by Nasdaq to become ineligible for inclusion in the Index, that component security would be replaced with the

[10] The Exchange believes that options trading on MNX have generated considerable interest from investors, as measured by its robust trading volume on CBOE.

[11] Full-size Nasdaq 100 Index and Mini Nasdaq 100 Index levels are disseminated through the Nasdaq Index Dissemination Services (''NIDS'') during normal Nasdaq trading hours (9:30 a.m. to 4 p.m. ET). The Index is calculated using Nasdaq prices (not consolidated) during the day and the NOCP for the close. The closing value of the Index may change until 5:15 p.m. ET due to corrections to the NOCP of the component securities. In addition, the Index is published daily on Nasdaq's Web site and through major quotation vendors such as Reuters and Thomson's ILX.

[12] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[13] For any given expiration month, options on the Nasdaq 100 Index will expire on the third Saturday of the month.

[14] Full-size Settlement Values and Mini Settlement Values are disseminated by CBOE.

largest market capitalization component not currently in the Index that met the eligibility criteria described earlier.

Although the Exchange is not involved in the maintenance of the Index, the Exchange represents that it will monitor the Index on a quarterly basis and file a proposed rule change with the Commission pursuant to Rule 19b–4 if: (i) The number of securities in the Index drops by one-third or more; (ii) 10% or more of the weight of the Index is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (iv) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security accounts for more than 25% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

The Exchange will further notify the Commission's Division of Market Regulation if Nasdaq determines to cease maintaining and calculating the Index, or if the Index values are not disseminated every 15 seconds by a widely available source. The ISE has represented that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, it would not list any additional series for trading and would limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The contract specifications for options on the Index are set forth as an Exhibit to the proposed rule change. The proposed contract specifications are identical to the contract specifications of NDX and MNX options that are currently listed on CBOE. The Index is a broad-based index, as defined in Exchange Rule 2001(j). Options on the Nasdaq 100 Index are European-style and A.M. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. ET), as set forth in ISE Rule 2008(a), would apply to options on the Nasdaq 100 Index. Exchange rules that are applicable to the trading of options on broad-based indexes would apply to both NDX and MNX.[15] Specifically, the trading of NDX and MNX options would be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For NDX, the Exchange proposes to establish aggregate position limits at 75,000 contracts on the same side of the market. The Full-size Nasdaq Index contracts would be aggregated with Mini Nasdaq 100 Index contracts, where ten Mini Nasdaq 100 Index contracts equal one Full-size Nasdaq 100 Index contract.[16] The Exchange also is proposing to amend its Rule 2006(a)(5) to conform it to CBOE Rule 24.4(e) with regard to hedge exemptions for options on NDX and MNX. Specifically, the Exchange seeks to add a table in its Rule 2006(a)(5), similar to the one provided by CBOE Rule 24.4(e), that enumerates the hedge exemption available for NDX and MNX and other broad-based indexes. A hedge exemption of 150,000 contracts and 1,500,000 contracts is available for NDX and MNX, respectively. The Exchange plans to retain its standard limit of 75,000 contracts for other broad-based indexes.[17]

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Index. Accordingly, purchases of put or call options with nine months or less until expiration must be paid for in full. Writers of uncovered put or call options would be required to deposit or maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set strike price intervals at least 2½ points for certain near-the-money series in near-term expiration months when the Full-size Nasdaq 100 Index or Mini Nasdaq 100 Index is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and at least 10 point strike price intervals for longer-term options. The minimum tick size for series trading below $3 is $0.05, and for series trading at or above $3 is $0.10. Based on the current index levels, the Exchange plans to set strike price intervals of 5 points and 2½ points for NDX and MNX, respectively.

The Exchange proposes to list options on both the Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[18] In addition, longer-term option series having up to 60 months to expiration may be traded.[19] The trading of any long-term Nasdaq 100 Index options would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: The American Stock Exchange, the Boston Stock Exchange, CBOE, the Chicago Stock Exchange, the National Stock Exchange, NASD, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the necessary systems capacity to support new options series that would result from the introduction of NDX, MNX, NDX LEAPS, and MNX LEAPS. The Exchange has provided the Commission with system capacity information to support its system capacity representations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[20] in general, and with Section 6(b)(5) in particular,[21] in that it will permit the trading of options on the Full-size Nasdaq 100 Index and

[15] *See* Exchange Rules 2000 through 2012.

[16] The position limits proposed by the Exchange for Nasdaq 100 Index options are identical to those established by CBOE.

[17] *See* Amendment No. 2. The same limits that apply to position limits would apply to exercise limits for these products.

[18] *See* ISE Rule 2009(a)(3).

[19] NDX LEAPS and MNX LEAPS are listed pursuant to ISE Rule 2009(b)(1) rather than Rule 2009(b)(2).

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

Mini Nasdaq 100 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–01 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–01 and should be submitted on or before February 28, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission notes that it previously approved the listing and trading of options on the Nasdaq 100 Index on another exchange.[24] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of such options on the ISE.

In approving this proposal, the Commission has specifically relied on the following representations made by the Exchange:

1. The Exchange will notify the Commission's Division of Market Regulation immediately if Nasdaq determines to cease maintaining and calculating the Nasdaq 100 Index, or if the Nasdaq 100 Index values are not disseminated every 15 seconds by a widely available source. If the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

2. The Exchange has an adequate surveillance program in place for options traded on the Nasdaq 100 Index.

3. The additional quote and message traffic that will be generated by listing and trading NDX, MNX, NDX LEAPS, and MNX LEAPS will not exceed the Exchange's current message capacity allocated by the Independent System Capacity Advisor.

The Commission further notes that in approving this proposal, it relied on the Exchange's discussion of how Nasdaq currently calculates the Index. If the manner in which Nasdaq calculates the Index were to change substantially, this approval order might no longer be effective.

In addition, the Commission believes that the position limits for these new options, and the hedge exemption from such position limits, are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.[25]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. Because options on the Nasdaq 100 Index already trade on another exchange, accelerating approval of the ISE's proposal should benefit investors by creating, without undue delay, additional competition in the market for these options.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change, as amended (SR–ISE–2005–01), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[22] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[25] *See* Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001) (SR–CBOE–00–14) (order approving a proposed rule change by CBOE to increase position and exercise limits for Nasdaq 100 Index options, expand the Index hedge exemption, and eliminate the near-term position limit restriction).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51111; File No. SR–ISE–2005–08]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Limitations on End-of-Day Trade-Through Liability

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. On January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing two changes to the current limitations on trade-through liability at the end of the trading day. First, the limit on liability is being raised to 50 contracts as of February 1, 2005. Second, this limit will be a pilot program, which expires on January 31, 2006. The text of the proposed rule change is available on the ISE's Web site (*www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment dated January 28, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected a typographical error in the rule text included in the original rule filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The ISE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the limitation on end-of-day trade-through liability. By way of background, the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') requires participating exchanges (''Participants'') to impose liability on their members who trade at prices inferior to those displayed on competing exchanges. Among other things, in the event that a member ''trades through'' a customer limit order on another market, the exchange that is traded through can send a ''Satisfaction Order,'' requiring the member to fill a Linkage order sent on behalf of the aggrieved customer.[7] Generally, the member is liable for the entire size of the customer order (up to the size of the trade-through). However, because it may be difficult for a member to hedge a position it acquires at the end of the day when filling a Satisfaction Order, all Participants currently limit this liability to 25 contracts during the last seven minutes of options trading.

The 25-contract limit is a pilot program that is scheduled to expire on January 31, 2005. The ISE is proposing to extend the exemption through January 31, 2006 and to raise the limit on liability to 50 contracts. The Participants currently are considering Linkage Plan amendments that, if proposed and approved, could obviate the need for this limitation of liability. Specifically, the amendments would increase the ability for members of Participants to receive automatic execution of P/A Orders and would provide tools to avoid trade-through liability generally, including at the end of the day. The Exchange anticipates that these amendments could be in effect within a year. At that time, the Participants would either allow the pilot to lapse, or, if they believed that a continuation of the limitation was appropriate, would discuss the matter further with the Commission staff.

[7] *See* Section 2(16)(c) of the Linkage Plan.

3. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[8] which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change would implement a provision of the Linkage Plan, providing a common limitation on liability for all participants in the options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[12] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File SR–ISE–2005–08 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–473 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[12] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 28, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(c)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51104; File No. SR–NYSE–2005–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating To Its Original Financial Listing Standards Pilot Program

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend its original financial listing standards pilot program (the ''Pilot Program'')[4] until the earlier of April 30, 2005, or such date as the Commission may approve File Number SR–NYSE–2004–20,[5] which seeks permanent approval of the Pilot Program. The Pilot Program established revised financial standards applicable to the listing of equity securities on the Exchange. The Pilot Program is currently in effect on an extended basis until the earlier of January 31, 2004, or such date as the Commission may approve File Number SR–NYSE–2004–20.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 50615 (October 29, 2004), 69 FR 64799 (November 8, 2004); 50123 (July 29, 2004) (File No. SR–NYSE 2004–58); 69 FR 57474 (August 5, 2004) (File No. SR–NYSE–2004–40), and 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR–NYSE–2003–43).

[5] *See* Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439 (July 2, 2004).

[6] The Exchange previously extended the Pilot Program from June 30, 2004 until October 31, 2004 in Securities Exchange Act Release No. 50123, *supra* note 4. The Exchange later extended the Pilot Program until January 31, 2005 in Securities Exchange Act Release No. 50615, *supra* note 4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 29, 2004, the Commission granted accelerated approval to the Pilot Program on a six-month pilot basis through July 30, 2004.[7] Two comments were received in response to File Number SR–NYSE–2003–43.[8] The NYSE thereafter filed File Number SR–NYSE–2004–15 on March 16, 2004 for immediate effectiveness,[9] which suspended portions of the original Pilot Program regarding minimum numerical continued listing set forth in Section 802.01B of the NYSE's Listed Company Manual. In File Number SR–NYSE–2004–15, the Exchange noted its intention to publish the requirements of the original Pilot Program regarding minimum numerical continued listing standards set forth Section 802.01B for public comment on a non-accelerated timeframe. File Number SR–NYSE–2004–15 did not, however, affect the Pilot Program with respect to original listing standards set forth in Sections 102.01C and 103.01B of the NYSE's Listed Company Manual or the Pilot Program's non-substantive change to the language of Section 802.01C.

On April 4, 2004, the Exchange filed File Number SR–NYSE–2004–20, which seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards and approval of the continued minimum listing standards as originally proposed in File Number SR–NYSE–2003–43. File Number SR–NYSE–2004–20 was published in the **Federal Register** on July 2, 2004.[10] Three comment letters were received in response to File Number SR–NYSE–2004–20.[11] Following consideration of these comment letters, the Exchange filed Amendment No. 2 to File Number SR–NYSE–2004–20 on August 31, 2004.[12] On October 12, 2004, the Exchange filed File Number SR–NYSE–2004–58 to extend the Pilot Program until January 31, 2005.[13] Thereafter, the Exchange filed amendments to File Number SR–NYSE–2004–20 on November 29, 2004,[14] December 17, 2004,[15] and January 25, 2005.[16] Therefore, the Exchange believes it is appropriate to extend the amended Pilot Program until the earlier of April 30, 2005, or such date as the Commission may approve File Number SR–NYSE–2004–20.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[17] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Although Rule 19b–4(f)(6) under the Act[20] requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to continue the existing Pilot Program. The NYSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the Exchange's Pilot Program to continue without any interruption in service to issuers and investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–08 on the subject line.

[7] *See* Securities Exchange Act Release No. 49154, supra note 4.

[8] *See* letters to Jonathan G. Katz, Secretary, Commission, from W. Randy Eaddy, Kilpatrick Stockton LLP, dated March 11, 2004, and Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated February 25, 2004.

[9] *See* Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004) (File No. SR–NYSE–2004–15).

[10] *See supra* note 5.

[11] *See* letters to Jonathan G. Katz, Secretary, Commission, from Richard F. Latour, President & CEO, MicroFinancial Incorporated, July 15, 2004, Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated July 20, 2004, and John L. Patenaude, Vice President Finance and Chief Financial Officer, Nashua Corporation, dated July 22, 2004.

[12] *See* letter to Nancy J. Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated August 31, 2004 (''Amendment No. 2'').

[13] *See* Securities Exchange Act Release No. 50615, supra note 4.

[14] *See* Amendment No. 3, dated November 29, 2004, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

[15] *See* Amendment No. 4, dated December 17, 2004, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

[16] *See* Amendment No. 5, dated January 25, 2005, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] *Id.*

[21] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available on NYSE's website (*http://www.nyse.com/regulation/construles/1098741855384.html*) and for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–08 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–465 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51091; File No. SR–NYSE–2005–01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Two Crossing Sessions in the Exchange's Off-Hours Trading Facility

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes operative the following pilot programs until February 1, 2006: Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session (''Crossing Session III''); and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security (''Crossing Session IV'') (Crossing Session III and Crossing Session IV, the ''Pilots'').[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] On November 12, 2004, the Exchange made an electronic 19b–4 filing to extend the Pilots as of December 1, 2004, the date the Pilots were due to expire. The Commission did not receive this filing, however. With the instant proposed rule change, the Exchange is making the Pilots operative until February 1, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis, for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the proposed rule change is available on the NYSE's Web site *(http://www.nyse.com)*, at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NYSE–2002–40,[6] the Commission approved the establishment of the Pilots in the Exchange's Off-Hours Trading Facility (''OHTF''), expiring on December 1, 2004. The instant proposed rule change makes the Pilots operative until February 1, 2006. No changes have been made to the manner in which the Pilots operate.[7]

Background

The purpose of SR–NYSE–2002–40 was to add two pilot programs, Crossing Session III and Crossing Session IV, to the OHTF. Before the proposed rule change, the OHTF consisted of Crossing Sessions I and II. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, closing price buy and sell orders. Crossing Session II permits the execution of crosses of multiple-stock (''basket'') aggregate price buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

[6] *See* Securities Exchange act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003) (SR–NYSE–2002–40).

[7] *See* January 7, 2005 telephone conference among Donald Siemer, Director, Market Surveillance, NYSE, Joseph P. Morra, Special Counsel, Division of Market Regulation (''Division''), Commission and Mitra Mehr, Attorney, Division, Commission.

Crossing Session III

As described below, the Exchange is proposing to make operative until February 1, 2006, the pilot program, Crossing Session III, as described in Exchange Rule 907. This Pilot would continue to allow for the execution on the NYSE of ''guaranteed price coupled orders'' whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session.

The Granting of ''Upstairs Stops''

In serving their institutional customers, member firms may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an ''upstairs stop,'' meaning that the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the ''stop'' price (in the case of a buy order) or at or above the ''stop'' price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the ''stop'' price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the upstairs stop.

Crossing Session IV

The Exchange is also proposing to make operative until February 1, 2006 the pilot program for Crossing Session IV as described in Exchange Rule 907. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the VWAP for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined.

Operation of Crossing Sessions

Crossing Session III and Crossing Session IV would continue to operate as follows:

(i) The original order as to which an ''upstairs stop'' or ''VWAP'' has been granted must be for at least 10,000 shares;

(ii) The customer must have received a ''stop'' (guaranteed price) or VWAP for the entire order;

(iii) The member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;

(iv) The unfilled balance of the order that would be executed in Crossing Session III or Crossing Session IV must be at least 10,000 shares;

(v) The customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

(vi) Orders may be entered in Crossing Session III or Crossing Session IV between 4 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;

(vii) Member firms would receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV;

(viii) Orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4 p.m. trading session;

(ix) Orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4 p.m. trading session; and

(x) At 6:30 p.m., the Exchange would print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and the national market system and, in general, to protect investors and the public interest.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow the Pilots to be operative without unnecessary delay.[12] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

• Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–01 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–01 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–469 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51120; File No. SR–OCC–2004–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Clearing Member Trade Assignment Processing

February 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 1, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-laws and Rules by adding new clearing member trade assignment (''CMTA'') processing requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since OCC amended its CMTA rules in 2004,[3] a group of clearing members, the options exchanges, and OCC has been collaborating to better define the rights and obligations of the clearing members that are parties to a CMTA arrangement in order to increase the regulatory and legal certainties with respect thereto. One focus of this working group has been to formulate new CMTA processing rules that would be applied to transactions that have been executed for institutional and other customers (''CMTA customers'') with prime brokerage arrangements with the carrying clearing member that serves as a CMTA customer's prime broker.

Under the proposed rule change, OCC would modify Article I (''Definitions'') of its By-Laws and Rules 401 and 403 to require clearing members that are parties to a CMTA arrangement involving CMTA customers to register with OCC certain customer identifiers that the clearing members use to process the CMTA transactions. Specifically, the new rules would provide that an exchange transaction executed on behalf of a CMTA customer that is to be transferred by CMTA processing for clearance and settlement will be identified by a special indicator called a Customer CMTA Indicator in the matching trade information submitted with respect to that transaction.[4] For each transaction marked with the Customer CMTA Indicator, the matching trade information would also contain identification information about the CMTA customer on whose behalf a transaction was executed (''CMTA Customer Identifier'') and the introducing broker that executed or arranged for the execution of such transaction (''IB Identifier'').[5]

If a transaction is marked with the CMTA Indicator, OCC's systems would verify against a database of registered identifiers that the CMTA Customer Identifier and the IB Identifier supplied as a part of the trade information match registered identifiers for purposes of the CMTA arrangement between the carrying and executing clearing members to the trade. This verification step would be in addition to the other verifications performed by OCC's systems for CMTA processing. If a transaction is marked with a Customer CMTA Indicator but either the CMTA Customer Identifier or the IB Identifier is incomplete, inaccurate, or missing,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 49841 (June 9, 2004); 69 FR 34207 (June 18, 2004) [File No. SR–OCC–2003–11]. CMTA processing enables one clearing member (''carrying clearing member'') to authorize another clearing member (''executing clearing member'') to direct that exchange transactions be transferred to an account of the carrying clearing member for clearance and settlement.

[4] The same indicator would be used by all options exchanges. OCC made various system changes to process this indicator and other information to be supplied with respect to CMTA customers' transactions. Matching trade information submitted by the options exchanges would need to include this information that requires changes to the exchanges' systems.

[5] If the introducing broker is also the executing clearing member, a separate IB Identifier would still be required.

OCC's systems would treat the transaction as a failed CMTA and would cause the transaction to be cleared in the executing clearing member's designated or default account in accordance with OCC Rule 403.

Under the terms of a model agreement developed by the working group to reflect the rights and obligations of the carrying and executing clearing members with respect to their customer CMTA arrangement, the firms would identify each CMTA covered customer. Separately, the clearing members would assign identifiers to their CMTA customers and introducing brokers. One clearing member then would register the assigned identifiers with OCC. OCC's systems would require the other clearing member to approve the identifiers before they are submitted to OCC for registration. Identifiers would be effectively registered when they are accepted by OCC's systems, subject to OCC's right to reject an already registered identifier.[6] OCC would retain the right to specify criteria applicable to the characters used to form identifiers for systemic reasons.

The prime broker clearing members involved in developing these requirements believe that including identification information about the CMTA customer and introducing broker to a transaction would make CMTA processing more transparent. Since carrying clearing members do not have the ability to approve or reject a transaction before it is entered into the exchanges' systems for reporting to OCC, they believe having OCC verify customer and introducing broker information will assist in limiting the chances that a transaction erroneously will be transferred into one of their clearing accounts. They also believe having such information available on the trade record will improve the effectiveness of their back office efforts to confirm that transactions cleared in their accounts conform to the information supplied by their customer or its introducing broker, and thereby, will facilitate decision making on whether the position resulting from the transaction is eligible for return under their CMTA agreement and Rule 403.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[7] because it fosters the prompt and accurate clearance and settlement of securities transactions, the safeguarding of funds and securities, and the protection of investors and the persons facilitating transactions by and acting on behalf of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on theProposed Rule Change Received from Members, Participants or Others

OCC did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.optionsclearing. com/publications/rules/proposed_changes/proposed_changes.jsp*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–19 and should be submitted on or before February 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–474 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[6] Carrying and executing clearing members would be responsible to update their respective registrations of CMTA Customer Identifiers and IB Identifiers including registering any changes or deletions with respect thereto.

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51113; File No. SR–PCX–2005–08]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto Relating to a Revision and Extension of a Limitation on Trade Through Liability at the End of the Options Trading Day Pilot Program

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2005, the Pacific Exchange (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the PCX. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend a pilot program for a limitation on trade-through liability for certain orders submitted pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'') during the period five minutes before the close of trading of the underlying security until the close of trading in the options class (''Pilot Program''). The Pilot Program would be extended to January 31, 2006 and would increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts.

The text of the proposed rule change is available on the PCX's Web site at *http://www.pacificex.com,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to extend the pilot provision limiting trade-through liability at the end of the day. Pursuant to the Pilot Program as currently in effect, an OTP Holder's[6] or OTP Firm's[7] trade-through liability is limited to 25 contracts per Satisfaction Order[8] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The proposed rule change would extend the Pilot Program for an additional year, until January 31, 2006. In addition, the proposal will increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts. This increase in the limit on liability would be effective on February 1, 2005, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

The participants in the Linkage Plan (''Participants'') are currently considering Linkage Plan amendments that, if proposed and approved, could obviate the need for this limitation of liability. Specifically, the amendments would increase the ability to receive automatic execution of P/A Orders[9] and would provide tools to avoid trade-through liability generally, including at the end of the day. The Participants, including the Exchange, anticipate that these amendments could be in effect within a year. At that time, the Participants would either allow the pilot to lapse, or, if they believed that a continuation of the limitation was appropriate, would discuss the matter further with Commission staff.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[15] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* PCX Rule 1(q).

[7] *See* PCX Rule 1(r).

[8] A ''Satisfaction Order'' is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[9] A Principal Acting as Agent (''P/A'') Order is an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. *See* Section 2(16)(a) of the Linkage Plan.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–08 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–08 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–466 Filed 2–4–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51094; File No. SR–PCX–2004–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to a Proposed Listing Fee Schedule for Structured Products

January 28, 2005.

I. Introduction

On May 11, 2004, the Pacific Exchange, Inc. (''PCX'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee schedule to provide separate listing fees for structured products. PCX filed Amendment No. 1 to the proposed rule change on August 9, 2004.[3] PCX filed Amendment No. 2 to the proposed rule change on August 23, 2004.[4]

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on September 24, 2004.[5] The Commission received no comment letters on the proposed rule change and Amendment Nos. 1 and 2. PCX filed Amendment No. 3 to the proposed rule change on December 9, 2004.[6] This order approves the proposed rule change and Amendment Nos. 1 and 2, and issues notice of filing of, and approves on an accelerated basis, Amendment No. 3.

II. Description of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), has proposed to adopt new listing fees specifically for Structured Products listed and traded on the Archipelago Exchange. The proposed listing fees include a non-refundable listing application fee, initial listing fees, and annual maintenance fees for Structured Products. The proposal adds a definition of ''Structured Products''[7] to the PCXE rules to clarify which products would be assessed the proposed listing fees.

In Amendment No. 3 to the proposed rule change, PCX added definitions of ''Exchange-Traded Fund''[8] and ''Closed-End Fund''[9] to the PCXE rules and a definition of ''Funds''[10] to the PCXE fee schedule. Amendment No. 3 also modified the proposed definition of ''Structured Products.'' Amendment No.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 5, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, PCX added a definition of ''Structured Products'' to the proposal and made other clarifying changes.

[4] *See* letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 20, 2004 (''Amendment No. 2''). In Amendment No. 2, PCX made a minor typographical correction to its proposed rule text.

[5] *See* Securities Exchange Act Release No. 50448 (October 1, 2004), 69 FR 58989.

[6] In Amendment No. 3, PCX added definitions for exchange-traded funds and closed-end funds and added a statement to the fee schedule to clarify that the term ''Funds'' refers to exchange-traded funds and closed-end funds in order to properly distinguish Funds from Structured Products.

[7] As modified by Amendment No. 3, Structured Products are defined as ''products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things'' and would include ''index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specified time.''

[8] Amendment No. 3 defines Exchange-Traded Funds as ''unit investment trusts, portfolio depository receipts and trust issued receipts designed to track the performance of the broad stock or bond market, stock industry sector, and U.S. Treasury and corporate bonds, among other things.''

[9] Amendment No. 3 defines Closed-End Funds (''CEFs'') as ''a type of investment company registered under the Investment Company Act of 1940 that offers a fixed number of shares'' that ''are professionally managed in accordance with the CEF's investment objectives and policies, and may be invested in stocks, fixed income securities or a combination of both.''

[10] Amendment No. 3 provides that ''Funds'', as that term is used in the Fee Schedule, include Exchange-Traded Funds and Closed-End Funds.

3 seeks to distinguish Structured Products from Funds and to further clarify the application of the different listing fees.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• (Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• (Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–43 on the subject line.

Paper Comments

• (Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–43 and should be submitted on or before February 28, 2005.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[12] which requires that a national securities exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the proposed rule change would enact a revised fee schedule to provide separate fees for the listing of structured products. The Commission also notes that the proposed fees would apply indiscriminately to all issuers of structured products. The Commission believes that the revised fee schedule should provide clarity to issuers regarding the appropriate fees applicable to structured products. Therefore the Commission believes that the proposed rule change, as amended, is consistent with the Act.

The Commission finds good cause for accelerating approval of Amendment No. 3 prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1 and 2 thereto were noticed for the full comment period and that no comments have been received on the proposal. The Commission further notes that Amendment No. 3 merely clarifies the proposal by adding definitions to its rules to codify the application of the various fees for the different derivative products. The Commission believes that accelerated approval should permit PCX to begin promptly to assess the new listing fees for structured products. For this reason, the Commission finds good cause exists, consistent with Section 19(b)(2) of the Act,[13] to approve Amendment No. 3 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PCX–2004–43), as amended by Amendment Nos. 1 and 2, is hereby approved, and that Amendment No. 3 is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–471 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51118; File No. SR–PCX–2005–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System

February 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The Exchange proposes to delete certain rules that have been determined by the Exchange as obsolete. The text of the proposed rule change is available at the Exchange's Web site (*http://www.pacificex.com*), at the Exchange's office of the secretary, and at the Commission's public reference room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 9, 2003, the Exchange responded to a request from the Commission's Office of Compliance Inspections and Examinations with respect to compliance with Section 19(g) of the Act.[5] The Exchange performed a complete review of PCXE rules, as well as the surveillance procedures thereto, and found a number of PCXE rules that are obsolete or superfluous in the current market structure. Therefore, the Exchange proposes to delete these rules at this time.

The proposed rules to be deleted are: (1) PCXE Rule 7.6, Commentary .04; (2) PCXE Rule 7.39; and (3) PCXE Rules 7.45–7.54. These rules relate to the OptiMark System. The Exchange represents that ETP Holders have never had access to the OptiMark System and the OptiMark System has never been used on ArcaEx. Hence, according to the Exchange, all rules related to the OptiMark System are defunct.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

[5] 15 U.S.C. 78s(g).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Although Rule 19b–4(f)(6) under the Act[10] requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request. The Exchange has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest, since the proposed rule change deletes provisions from Exchange Rules that relate to a system that the Exchange never used. Thus, the Commission designates the proposal to be operative upon filing with the Commission.[11]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See id.*

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- (Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- (Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–07 on the subject line.

Paper Comments

- (Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–07 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–472 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51114; File No. SR–Phlx–2005–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Extension of a Pilot Limiting Trade-Through Liability at the End of the Options Trading Session

January 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend proposes to amend Exchange Rule 1085(a)(2)(ii)(B), Order Protection, to correspond to the extension of the current pilot (''pilot'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''),[7] which limits Trade-Through[8] liability at the end of the options trading session, until January 31, 2006. The extended pilot would increase the limit on liability at the end of the trading session from 25 contracts to 50 contracts per Satisfaction Order.[9] The text of the proposed rule change is available on the Phlx Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot contained in Exchange Rule 1085(a)(2)(ii)(B), which limits trade-through liability at the end of the options trading session. Currently under the pilot, an Exchange member's trade-through liability is limited to 25 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The Commission temporarily approved the pilot on January 31, 2003,[10] followed by approval on June 18, 2003.[11] The Commission then granted an extension of the pilot until June 30, 2004[12] and then until January 31, 2005.[13]

The Exchange proposes to extend the pilot for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. This increase in the limit on liability would be effective on February 1, 2005, after the current pilot expires.

As a condition to granting permanent approval of this limitation, the Commission required that the options exchanges participating in the Linkage Plan (''Participants'') provide the Commission with a report (''Report'') regarding data on the use of the exemption no later than 60 days before seeking permanent approval. The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the trade-through limitation. This extension of the pilot would allow the limitation to continue in effect, as amended, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that the proposed rule change is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade by extending the pilot limiting trade-through liability during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class until January 31, 2006, and by

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated January 28, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange made technical corrections to the rule text included in the original rule filing. Amendment No. 1 replaced the original filing it its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1–7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Approval of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Order approving the Linkage Plan).

[8] ''Trade-Through'' means a transaction in an options series at a price that is inferior to the NBBO. *See* Exchange Rule 1083(t).

[9] A ''Satisfaction Order,'' is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Exchange Rule 1083(k)(iii).

[10] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis).

[11] *See* Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

[12] *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[13] *See* Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004)) (Order approving Joint Amendment No. 12). This extension increased the maximum liability from 10 to 25 contracts.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

increasing the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the same period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[19] By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2005–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File SR–Phlx–2005–07 and should be submitted on or before January 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–467 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

[19] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 28, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(c)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51116; File No. SR–Phlx–2005–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Fee Schedule for Electronic Communications Networks

February 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees to extend its current pilot program for an additional one-year period (until January 31, 2006), to continue to impose a $2,500 monthly fee for electronic communications networks (''ECNs'') that are member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

organizations and send order flow to the Exchange's equity trading floor.[3] The current pilot program is scheduled to expire on January 31, 2005.[4]

The $2,500 fee would continue to apply to ECN trades where the ECN is not acting as a specialist or a floor broker, but rather an order flow provider. This fee is in lieu of the equity transaction value charge that would normally apply to (non-specialist) equity trades.

No changes are being made to the Exchange's Summary of Equity Charges which is available at the principal office of the Phlx, and on the Phlx's Web site, *http://www.phlx.com/exchange/memservices/feesched.pdf.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend for an additional one-year period (until January 31, 2006) the Exchange's current ECN pilot program that imposes a $2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor. The continuation of the $2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.[5] The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the initial program. The $2,500 fee would continue to apply to ECNs that are not acting as a Phlx specialist or floor broker.[6] Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it could be subject to various floor-related fees respecting its floor operation.[7] In addition, an ECN's transactions as a floor broker would be subject to the equity transaction charge and its specialists would be subject to other charges.[8] Even if the ECN were acting as a floor broker or specialist with respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges. An ECN that operates only as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Permit Fees, Foreign Currency User Fees, Application Fee, Initiation Fee, Transfer Fee for Foreign Currency Options Participations, Phlx CCH Guide Fee, Examinations Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration fees, Trading Floor Personnel Registration Fee, Off-Floor Trader Initial Registration Fee and Annual Fee, and Remote Specialist fees.

Because the $2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction charge that would otherwise apply to an ECN's equity trades ranges, based on share volumes, with a $50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly $2,500 fee is generally more favorable than the equity transaction charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that $2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity, and improve the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees among Exchange members, due to the unique character of ECNs, and because the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

[3] As stated on the Phlx fee schedule, an ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by, or on behalf of, an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal. *See also* Rule 11Ac1–1(a)(8) under the Act, 17 CFR 240.11Ac1–1(a)(8) (defining ECN for the purposes of Rule 11Ac1–1(c)(5)).

[4] *See* Securities Exchange Act Release No. 49173 (February 2, 2004), 69 FR 6358 (February 10, 2004) (extending the ECN fee pilot program until January 31, 2005).

[5] To recoup costs due from the Exchange to the Commission pursuant to Section 31(b) of the Act, 15 U.S.C. 78ee(b), the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects.

[6] An ECN would also continue to incur certain license fees and other fees as specified on the Exchange's schedule of dues, fees, and charges. In addition, an ECN would continue to incur specialist or equity floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

[7] According to the Exchange, these include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Kiosk Construction Fee (when requested by specialist), Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Instinet, and Reuters Equipment Pass-Through Fee.

[8] For example, certain license fees may apply to specialists, and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder, in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–06 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–470 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 13 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51096; File No. SR–Phlx–2004–96]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to its Equity Option Specialist Deficit (Shortfall) Fee

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Phlx submitted Amendments No.1 and No. 2 to the proposal on January 25, 2005, and January 28, 2005, respectively.[3] The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Equity Option Specialist Deficit (Shortfall) Fee (''shortfall fee'') in two ways: (1) To include Streaming Quote Options traded on Phlx XL, the Exchange's electronic trading platform for options, in the shortfall fee calculation, which have thus far been exempt from the shortfall fee; and (2) to amend the amount of the shortfall fee cap and revise how it is applied per option for the top 120 options, including Streaming Quote Options traded on Phlx XL.

Currently, specialists [6] are required to reach a total national monthly contract volume of at least 12 percent in any top 120 option,[7] in most cases,[8] in order not to be charged a monthly shortfall fee of $0.35 per contract by the Phlx.[8] However, the shortfall fee is currently not applicable to top 120 Streaming Quote Options traded on Phlx XL.[10] At this time, the Exchange proposes to charge equity options specialist units the shortfall fee of $0.35 per contract currently in effect to be paid monthly in connection with transactions in any top 120 Streaming Quote Option traded on Phlx XL if at least 12 percent of the total

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendments No. 1 and No. 2 made clarifying changes to the tiered threshold schedule applicable during the transition period, described at *infra* note 8, and other minor technical changes.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The Exchange uses the terms ''specialist unit'' and ''specialist'' interchangeably herein.

[7] A top 120 option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by The Options Clearing Corporation.

[8] An exception to the 12 percent volume threshold amount relates to a transition period for newly listed top 120 options or for any top 120 option (including those equity options listed on the Exchange before February 1, 2004) acquired by a new specialist unit. During the transition period, the shortfall fee is imposed in stages such that the requisite volume threshold is zero percent for the first full calendar month of trading, three percent for the second full calendar month of trading, six percent for the third full calendar month of trading, nine percent for the fourth full calendar month of trading and 12 percent for the fifth full calendar month of trading (and thereafter). *See* Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR–Phlx–2004–08).

[9] *See* Securities Exchange Act Release No. 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003) (SR–Phlx–2003–45).

[10] *See* Securities Exchange Act Release No. 50332 (September 9, 2004), 69 FR 55858 (September 16, 2004) (SR–Phlx–2004–49).

national monthly contract volume in that option is not effected on the Exchange in that month.

The Exchange also proposes to amend the amount of the shortfall fee cap and its application. The shortfall fee cap will be applicable to all top 120 options pursuant to the following schedule: [11]

- If Phlx volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking Stock SM (traded under the symbol ''QQQQ''),[12] is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $10,000 will apply.
- If Phlx volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $5,000 will apply.
- If Phlx volume in options on QQQQ is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $20,000 will apply.
- If Phlx volume in options on QQQQ is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $10,000 will apply.

All other aspects of the shortfall fee will remain unchanged.[13] The proposal is scheduled to be effective for trades settling on or after January 3, 2005.

The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The shortfall fee is designed to create an incentive for options specialists to promote the options for which they are the designated specialists. The purpose of applying the shortfall fee to Streaming Quote Options is to encourage specialist units trading in the top 120 options to garner a certain percentage of market share. In addition, the Exchange believes that amending the shortfall fee cap should encourage specialists to continue to compete for market share in the top 120 options, while reducing the economic burden on specialists who are competing for order flow in the national market in the top 120 options. The Exchange believes that it is appropriate to establish higher shortfall fee caps for options on QQQQ because the volume in that option far exceeds the volume in any other option.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–96. This file

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[11] Currently, the Exchange imposes a limit of $10,000 to the specialists on the amount of the shortfall fee per option, per month for any top 120 option, excluding options traded on Phlx XL, provided that the market share effected on the Phlx for that top 120 option is equal to or greater than 50 percent of the applicable national monthly contract volume threshold in effect. The volume threshold is 12 percent in most cases. Therefore, for each month, if a specialist unit trades an amount equal to or greater than 6 percent of the total national market share, the shortfall fee is imposed, but is currently limited to $10,000 per option, per month. *See* Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR–Phlx–2004–08). Pursuant to this proposal, the amount of the cap and how it is applied per option will change.

[12] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the ''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[13] For example, the total volume calculation for purposes of determining the requisite threshold will continue to be based on the current month's volume and the three-month differentiation to determine whether an equity option is considered a top 120 option will also remain in effect, *i.e.* December's top 120 options are based on September's volume. In addition, the $10,000 cap applied in connection with the tiered threshold schedule for any newly listed top 120 option and any top 120 option acquired by a new specialist unit, not affiliated with an existing Phlx options specialist unit, will remain unchanged. *See* Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR–Phlx–2004–08).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[17] 17 17 CFR 240.19b–4(f)(2).

[18] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on January 28, 2005, the date the Phlx filed Amendment No. 2.

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–96 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–476 Filed 2–4–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0432]

Telesoft Partners II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to Aarohi Communications, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P. and Telesoft NP Employee Fund, LLC, all Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of Aarohi Communications, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 6, 2005.

Jaime Guzman-Fournier,

Acting Associate Administrator for Investment.

[FR Doc. 05–2273 Filed 2–4–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Scottsdale Airport, Scottsdale, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Scottsdale for Scottsdale Airport under the provisions of 49 U.S.C. 47501 *et seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requlirements.

EFFECTIVE DATE: The effective date of the FAA's determination of the noise exposure maps is January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Michelle Simmons, Federal Aviation Administration, Western Pacific Region Headquarters, P.O. Box 92007, Los Angeles, California 9009, Telephone 310/725–3614.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Scottsdale Airport are in compliance with applicable requirements of part 150, effective January 21, 2005. Under 49 U.S.C. section 47503 of the Aviation Safety and Notice Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regualtions and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposre maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by City of Scottsdale, Arizona. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of part 150 includes: Exhibit 1 ''Existing Conditions (2004) Noise Exposure Map,'' and Exhibit 2 ''Five-Year Forecast (2009) Noise Exposure Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Yearly Day-Night Average Sound Level (DNL) 65, 70a nd 75 noise contours. Estimates for the number of people within these contours for the year 2004 are shown in Table 4A. Estimates of the future residential population within the 2009 noise controus are shown in Table 4A. Estimates of the future residential population within the 2009 noise controus are shown in Table 4D. Exhibit 3L displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3D, 3E, 3F and 3G. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 3A and 3B. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 21, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were

[19] 17 CFR 200.30–3(a)(12).

developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailing overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Scott Gray, Aviation Director, City of Scottsdale, Aviation Department, 15000 N. Airport Drive Suite 200, Scottsdale, Arizona 85260.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on January 21, 2005.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–2231 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–07–00–ABE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 9, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lawrence J. Krauter of the Lehigh-Northampton Airport Authority at the following address: 3311 Airport Road, Allentown, PA 18109–3040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northampton Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 28, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lehigh-Northampton Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 6, 2005.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2005.

Proposed charge expiration date: August 1, 2005.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $27,940,236.

Brief description of proposed project(s): Main Terminal Renovations & Additions Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lehigh-Northampton Airport Authority.

Issued in Camp Hill, Pennsylvania, on January 28, 2005.

Wayne T. Heibeck,

Manager, Harado Eastern Region.

[FR Doc. 05–2219 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New York & Lake Erie Railroad (NYLE) (Waiver Petition Docket Number FRA–2004–19950)

The New York & Lake Erie Railroad (NYLE) seeks a waiver of compliance

from certain provisions of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows. The NYLE is a short line freight carrier that travels 29.5 miles through rural countryside and small communities, averaging 1.5 times per week. The number of cars hauled per train is 5 cars or less. The railroad has two line segments, which are connected and extend from Cattaraugus, NY to Dayton, NY (10.1 miles) and from Conewango Valley, NY to Gowanda, NY (19.4 miles). The point of interchange is in Gowanda, NY.

This request is for three locomotives, specifically locomotive numbers NYLE 6101, NYLE 1013, and NYLE 308. At the present time, NYLE 6101 is equipped with Safety Glass, AS–2, 230, 5, and DOT 1. NYLE 1013 is equipped with Laminated Safety Glass AS–1, DOT 14M–220–ASI–030. NYLE 308 is equipped with Clear Laminated Safety Glass, AS–2 101. The railroad claims that they have not had any problems with window breakage due to vandalism, and they have not had to replace glass due to breakage from flying objects.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2004–19950) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on February 1, 2005.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 05–2235 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Railroad Company

[Docket Number FRA–2004–19260]

The Union Railroad (URR), a Class III switching railroad, seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) § 223.13 Requirements for existing cabooses for nine cabooses to be used in revenue freight service. The URR is engaged in general railroad transportation and provides railroad switching service primarily to the steel industry. In addition to steel mills, the railroad serves the coal industry through Duquesne Wharf, a coke production facility at Clairton, Pennsylvania, and more than 30 other customers in the automotive, chemical, and aggregate business.

The URR currently consists of 65 miles of main track and approximately 200 miles of yard tracks and sidings, all located within a 10-mile radius in Allegheny County, Pennsylvania. The northernmost point is located at North Bessemer, Pennsylvania, where the railroad proceeds southward through Turtle Creek, East Pittsburgh, Monongahela Junction, Clairton Junction and Clairton.

Laminated safety glass is proposed to be used in lieu of glazing materials that meet the requirements of FRA Type I and Type II. Cabooses on the URR, which have been recently retired from service and scrapped, were operating with laminated safety glazing under a similar waiver granted in 1980 [FRA Docket Number RSGM–80–1]. There have been no reported acts of vandalism or breakage of caboose glazing caused by striking objects. Cabooses C–100, 101, 102, 103, 104, 105, 107, 108, and 109 will be operating over the same routes and schedules as the equipment covered by the previous waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2004–19260) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on February 1, 2005.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 05–2234 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmar Billings, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on February 1, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety, Exemptions & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Exemption Applications			
12381–N	Ideal Chemical & Supply Co., Memphis, TN	2	03–31–2005
12412–N	Great Western Chemical Company, Portland, OR	3	03–31–2005
12950–N	Walnut Industries, Inc., Bensalem, PA	4	03–31–2005
12797–N	Environmental Quality Co., Belleville, MI	4	04–30–2005
13054–N	CHS Transportation, Mason City, IA	4	02–28–2005
13176–N	Union Pacific Railroad Company, Omaha, NE	4	03–31–2005
13422–N	Puritan Bennett, Plainfield, IN	3	02–28–2005
13228–N	AirSep Creekside Corp., Buffalo, NY	4	03–31–2005
13266–N	Luxfer Gas Cylinders, Riverside, CA	1	02–28–2005
13482–N	U.S. Vanadium Corporation (Subsidiary of Straegic Minerals Corporation), Niagara Falls, NY.	4	03–31–2005
13461–N	FIBA Technologies, Inc., Westboro, MA	4	03–31–2005
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	02–28–2005
13347–N	ShipMate, Inc., Torrance, CA	4	02–28–2005
13341–N	National Propane Gas Association, Washington, DC	1	02–28–2005
13302–N	FIB Technologies, Inc., Westboro, MA	4	02–28–2005
13314–N	Sunoco Inc., Philadelphia, PA	4	03–31–2005
13309–N	OPW Engineered Systems, Lebanon, OH	4	03–31–2005
13295–N	Taylor-Wharton, Harrisburg, PA	1	02–28–2005
13599–N	Air Products and Chemicals, Inc., Allentown, PA	4	02–28–2005
13597–N	Piexon USA Inc., North Canton, OH	4	02–28–2005
13636–N	Timberline Environmental Services, Cold Springs, CA	4	02–28–2005
13585–N	Texas Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI	4	02–28–2005
13582–N	Linde Gas LLC (Linde), Independence, OH	4	03–31–2005
13563–N	Applied Companies, Valencia, CA	4	03–31–2005
13560–N	Texas Ovonic Hydrogen Systems L.L.C. (TOHS), Rochester Hills, MI	4	02–28–2005
13547–N	CP Industries, McKeesport, PA	4	03–31–2005
13484–N	Air Liquids America L.P., Houston, TX	4	03–31–2005
13859–N	Degussa Corporation, Parsippany, NJ	4	02–28–2005
13860–N	United States Enrichment Corporation (USEC), Paducah, KY	4	02–28–2005
13776–N	MHF Logistical Solutions, Cranberry Twp., PA	4	02–28–2005
13265–N	Aeropres Corporation, Shreveport, LA	4	02–28–2005
13281–N	The Dow Chemical Company, Midland, MI	4	03–31–2005
13188–N	General Dynamics, Lincoln, NE	3	04–30–2005
13183–N	Becton Dickinson, Sandy, UT	4	02–28–2005
13077–N	MacIntyre, Middlebury, VT	4	03–31–2005
Modification to Exemptions			
1769–M	Great Western Chemical Company, Portland, OR	2	03–31–2005
11769–M	Great Western Chemical Company, Portland, OR	2	03–31–2005
7277–M	Structural Composites Industries, Pomona, CA	3	02–28–2005
13027–M	Hernco Fabrication & Services, Midland, TX	4	03–31–2005
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	03–31–2005
11537–M	American Development Corporation, Vanceboro, NC	2	03–31–2005
11241–M	Rohm and Haas Co., Philadelphia, PA	1	03–31–2005
11537–M	Hawkins, Inc., Minneapolis, MN	2	03–31–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	03–031–2005
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	03–31–2005

Application No.	Applicant	Reason for delay	Estimated date of completion
10878–M	Tankcon FRP Inc., Boisbriand, Qc	1, 3	03–31–2005
9421–M	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA	4	03–31–2005
12022–M	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA3	4	03–31–2005
11537–M	Interstate Chemical Company, Inc., Hermitage, PA	2	03–31–2005
10882–M	Espar Products, Inc., Mississauga, Ontario, Canada	4	03–31–2005
8162–M	Structural Composites Industries, Pomona, CA	3	02–28–2005
8718–M	Structural Composites Industries, Pomona, CA	3	02–28–2005
10019–M	Structural Composites Industries, Pomona, CA	3	02–28–2005
12065–M	Petrolab Company, Latham, NY	4	02–28–2005
11537–M	JCI Jones Chemicals, Inc., Milford, VA	2	03–31–2005
11769–M	Hydrite Chemical Company, Brookfield, WI	2	03–31–2005

[FR Doc. 05–2236 Filed 2–4–05; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Stop Payment/ Replacement Check Request.

DATES: Written comments should be received on or before April 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@pbd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Stop Payment/Replacement Check Request.

OMB Number: 1535–0070.

Form Number: PD F 5192.

Abstract: The information is requested to place a stop payment on a Treasury Direct check and request a replacement check.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2005.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 05–2251 Filed 2–4–05; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent with Respect to United States Savings Bonds/Notes.

DATES: Written comments should be received on or before April 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Disclaimer and Consent With Respect to United States Savings Bonds/ Notes.

OMB Number: 1535–0113.

Form Number: PD F 1849.

Abstract: The information is requested when the requested savings bonds/notes transaction would appear to affect the right, title or interest of some other person.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 700.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2005.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 05–2252 Filed 2–4–05; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before April 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1535–0114.

Form Number: PD F 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2005.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 05–2253 Filed 2–4–05; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Definitive Securities and U.S. Bearer Securities.

DATES: Written comments should be received on or before April 9, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities and U.S. Bearer Securities for Conversion to BECCS or CUBES.

OMB Number: 1535–0059.

Form Number: PD F 1832, and PD F 1832–1.

Abstract: The information is requested to complete transaction involving the assignment of U.S. Registered and Bearer Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2005.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 05–2254 Filed 2–4–05; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Monday,

February 7, 2005

Part II

Department of Transportation

48 CFR Chapter 12

Re-issuance of the Department of Transportation Acquisition Regulation; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Chapter 12

[Docket No. OST–2004–19899]

RIN 2105–AD28

Re-issuance of the Department of Transportation Acquisition Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Transportation is reissuing the Transportation Acquisition Regulation (TAR). This interim final rule reflects changes made to implement and/or supplement the Federal Acquisition Regulation (FAR). The TAR has been substantially revised to update references to obsolete policies, procedures and organizations; incorporate electronic links to references such as provisions to the FAR, U.S. Codes, the Code of Federal Regulations; and adopt by reference Office of Federal Procurement Policy Letters and Executive orders. The reissued TAR eliminates coverage that is unnecessary or duplicates the FAR or other directives. Only coverage that is suitable and necessary will be retained in the regulation. These efforts will create a 2004 edition of the TAR that is consistent with the 2001 edition of the FAR. The 2004 edition of the TAR will replace the 1994 edition.

DATES: This rule is effective April 8, 2005. Comments should be received by March 9, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this interim final rule should be filed with: the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the docket number OST–2004–19899 at the beginning of your comments. You may also submit comments through the internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments to the docket on the Internet at *http://dms.dot.gov.* Search by using the last set of digits in the docket number (omitting the ''OST–2004'').

FOR FURTHER INFORMATION CONTACT: Rita Williams, Office of the Senior Procurement Executive, M–60, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9956.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation (DOT) has determined that changes to the Transportation Acquisition Regulation (TAR) are necessary to implement and align it with the 2001 Federal Acquisition Regulation (FAR). DOT conducted a comprehensive review of the 1994 Edition of the TAR with the goal of updating obsolete coverage, and implementing new internal policies applicable to the DOT acquisition workforce. As a result, the TAR Re-write team under the direction of the Senior Procurement Executive, has undertaken a complete re-write of the TAR.

The TAR re-write project was conducted in coordination with all Operating Administrations (OAS) of the DOT. OAs participated in the development of the new TAR language and devised processes that were most efficient and least burdensome to its users.

All United States Coast Guard (USCG) specific language and subsequent clauses were removed from the TAR as a result of the transfer of USCG from the DOT to the Department of Homeland Security on March 1, 2003. As a result of organizational restructuring within DOT, the Federal Motor Carrier Safety Administration (FMSCA) was established as an OA and given an appropriate agency code for the purpose of assigning contract numbers. The delegations of authority and responsibilities for internal acquisition functions have been authorized at the lowest reasonable level or allowed by higher level regulations or statutes. During the re-write of TAR, care was taken to eliminate unnecessary coverage including clauses, forms and obsolete DOT notices or orders that no longer exist, and restructured language that was misaligned with the FAR coverage. The goal of re-writing the TAR was to ensure the regulation would only contain current and appropriate coverage for a Department level acquisition regulation, and to remove and re-designate any internal agency guidance from the TAR to the Transportation Acquisition Manual (TAM). To implement Executive Order 13043, the Seat Belt Use Policies and Programs clause was established. In addition, implementation of the Federal Information Security Management Act of 2002 and the Computer Security Act of 1987 required the establishment of the Requirements for Unclassified Information Technology Resources and revision of the Qualification of Contractor Employees clauses respectively.

Those parts which contain no coverage, and have been reserved are: Parts 1208, 1209, 1210, 1212, 1218, 1220, 1221, 1225, 1226, 1229, 1230, 1234, 1238, 1240, 1241, 1243, 1244, and 1248 through 1251.

B. Regulatory Analysis and Notices

The Department has determined that this rule is not a significant regulatory action, and therefore, was not subject to review under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department does not believe that there would be significant federalism implications to warrant the preparation of a federalism assessment.

C. Regulatory Flexibility Act

The Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely restates previous TAR coverage, deletes certification requirements which do not significantly alter the amount of information currently required, and makes various editorial revisions.

This proposed rule is not expected to have a significant impact on a substantial number of small entities because any additional costs associated with the rule can be factored into the contract price and there is no distinction on this issue between a large or small business. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are solicited from small businesses and other interested parties and will be considered in accordance with section 610 of the Act in the development of the final rule.

D. Paperwork Reduction Act

The information collection requirements associated with this rule have been submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. chapter 35 under OMB No. 2105–0517; Administration: Office of the Secretary of Transportation;

Title: Transportation Acquisition Regulation (TAR);

Summary: This proposal implements requirements of the Federal Acquisition Regulation (FAR), other regulations and

statutes to solicit, negotiate, award, and administer contracts;

Use of Information: This information supports the needs of the Department of Transportation to evaluate offers, to ensure appropriate contract controls are in place, and to minimize conditions conducive to fraud, waste, and abuse.

Burden Estimate: 2,514 hours; Forms: DOT Form 1681 and DOT Form 4220.43; clauses: 1252.217–76, 1252.237–70 and 73, 1252.242–70 and 72, and 1252.245–70.

Respondents (including number of): The likely respondents to this proposed information are contractors and offerors who will respond to solicitations or are awarded DOT contracts.

Frequency: Reports are submitted at different times depending upon the need or requirements stipulated in the FAR or TAR.

Average burden hours per respondent: 7 hours 45 minutes. Comments on the proposed information collection requirement should be sent to the DOT rulemaking.

The agency is soliciting comments to—

(1) evaluate whether the proposed information requirements are necessary;

(2) evaluate the accuracy of the Agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by directing them to the address listed in the **ADDRESSES** section of the document. Comments may also be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053. Attention: Desk Officer for the Department of Transportation.

E. Justification for Interim Final Rule

This rulemaking pertains exclusively to procedures concerning public contracts. Consequently, the requirements of the Administrative Procedure Act for notice and an opportunity for public comment prior to issuing a final rule do not apply. Under 5 U.S.C. § 553(a)(2), matters relating to, among other things, public contracts are not subject to notice and comment requirements. For this reason, the Department has not issued a notice of proposed rulemaking for this final rule. However, consistent with the Department's Regulatory Policies and Procedures, the Department is providing an opportunity for public comment before the final rule goes into effect.

List of Subjects in 48 CFR Chapter 12

Government procurement.

This rule is issued this 13th day of January, 2005, at Washington, DC, under the delegated authority of the Senior Procurement Executive pursuant to 49 CFR 1.59a (a)(1).

David J. Litman,

Senior Procurement Executive.

■ For the reasons set out in the preamble, 48 CFR chapter 12 is revised to read as follows:

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—GENERAL

Part

SUBCHAPTER B—ACQUISITION PLANNING

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

SUBCHAPTER G—CONTRACT MANAGEMENT

SUBCHAPTER H—CLAUSES AND FORMS

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1201.1—Purpose, Authority, Issuance

Sec.

Subpart 1201.2—Administration

Subpart 1201.3—Agency Acquisition Regulations

Subpart 1201.4–70—Deviations From the FAR and TAR

Subpart 1201.6—Career Development, Contracting Authority and Responsibilities

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Appendix to Part 1252-TAR Matrix

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

The Department of Transportation (DOT) Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

1201.104 Applicability.

(a) Statute, the (FAR) Title 48, Code of Federal Regulations (CFR) chapter 1, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the (FAR) 48 CFR chapter 1, or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any question of applicability concerning an acquisition regulation or a procedure found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM):

(1) Statute;

(2) (FAR) 48 CFR chapter 1 or other applicable regulation;

(3) (TAR) 48 CFR chapter 12;

(4) DOT Orders; and

(5) TAM.

(c) The Maritime Administration may depart from the requirements of the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. 113(e)(15) but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the (FAR) 48 CFR chapter 1 and/or (TAR) 48 CFR chapter 12 shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

(d) The (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12 and TAM do not apply to the Federal Aviation Administration as provided by the Department of Transportation and Related Agencies Appropriations Act, 1996, Public Law 104–50, unless otherwise directed by the Office of the Secretary of Transportation.

1201.105 Issuance.

1201.105–1 Publication and code arrangement.

(a) The (TAR) 48 CFR chapter 12 is published in:

(1) The **Federal Register**; and

(2) Cumulative form in the CFR.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

1201.105–2 Arrangement of regulations.

(a) *General.* The (TAR) 48 CFR chapter 12, which encompasses both Department and Operating Administration (OA)-specific guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance that is OA-specific contains the OA's acronym directly after the heading. The following acronyms apply:

FHWA—Federal Highway Administration
FMCSA—Federal Motor Carrier Safety Administration
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
MARAD—Maritime Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary
RSPA—Research and Special Programs Administration
SLSDC—Saint Lawrence Seaway Development Corporation

(b) *Numbering.* (1) *Departmentwide guidance.* (i) The numbering illustrations at (FAR) 48 CFR 1.105–2 apply to (TAR) 48 CFR chapter 12.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix ''12'' followed by the complete (FAR) 48 CFR chapter 1 cite. For example, (TAR) 48 CFR 1201.201–1(b)).

(iii) Coverage in (TAR) 48 CFR chapter 12 that supplements (FAR) 48 CFR chapter 1 will use part, subpart, section and subsection numbers ending in ''70'' through ''89'' (*e.g.*, (TAR) 48 CFR 1201.301–70). A series of numbers beginning with ''70'' is used for provisions and clauses.

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a ''70'' or higher number, that implements the (FAR) 48 CFR chapter 1 uses the identical number sequence and caption of the (FAR) 48 CFR chapter 1 segment being implemented, which may be to the paragraph level. Paragraph numbers and letters are not always shown sequentially, but may be shown by the specific FAR paragraph implemented. For example, (TAR) 48 CFR 1201.201–1 contains only paragraph (b) because only this paragraph, correlated with FAR, implements (TAR) 48 CFR chapter 12.

(2) *Operating Administration-unique guidance.* Supplementary material for which there is no counterpart in (FAR) 48 CFR chapter 1 or (TAR) 48 CFR chapter 12 shall be identified using chapter, part, subpart, section, or subsection numbers of ''90'' and higher.

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross reference to the FAR in (TAR) 48 CFR chapter 12 will be cited by ''FAR'' followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by ''TAM'' followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be referenced by the numbered cite only.

1201.105–3 Copies.

(a) Copies of the TAR in **Federal Register**, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The electronic version of the **Federal Register** may be found at *http://www.nara.gov* and the CFR at *http://www.gpoaccess.gov*.

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the Internet at *http://www.dot.gov/ost/m60*.

1201.106 OMB Approval Under the Paperwork Reduction Act.

(a) *Data collection by regulation.* The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB).

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations requiring this level of information collection may be released prior to OMB approval provided that:

(1) A statement is included in the solicitation to the effect that the contract will not be awarded until OMB approval of the information collection requirements of the proposed contract has been obtained; and

(2) Enough time is permitted to allow receipt of OMB approval prior to contract award.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

(b) The SPE is responsible for providing a DOT representative to the

Civilian Agency Acquisition Council (CAAC).

Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.

(a)(1) *Acquisition regulations.* (i) *Departmentwide acquisition regulations.* The Department of Transportation's (DOT's) Senior Procurement Executive (SPE) is the individual having authority to issue or authorize the issuance of agency regulations that implement or supplement the FAR and to include agency-unique policies, etc. that govern the contracting process. This authority was re-delegated from the Assistant Secretary for Administration.

(ii) *Operating Administration (OA) acquisition regulations.* OA acquisition regulations, and any changes thereto, shall be reviewed and approved by the Senior Procurement Executive (SPE) for insertion into the (TAR) 48 CFR chapter 12 as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the **Federal Register** in accordance with (FAR) 48 CFR 1.501. OA regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless otherwise specified.

(2) *Acquisition procedures.* The SPE is the individual who issues or authorizes the issuance of internal agency guidance at any organizational level. DOT internal operating procedures are contained in the Transportation Acquisition Manual (TAM). OA procedures necessary to implement or supplement the (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12, or TAM may be issued by the Head of the Contracting Agency (HCA), who may delegate this authority to any organizational level deemed appropriate. OA procedures may be more restrictive or require higher approval levels than those permitted by the TAM unless otherwise specified.

(b) The authority of the agency head under (FAR) 48 CFR 1.301(b) to establish procedures to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with the procedures in FAR Subpart 1.5 is delegated to the Office of the General Counsel, Assistant General Counsel for Regulation and Enforcement (C–50).

1201.301–70 Amendment of (TAR) 48 CFR chapter 12.

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. Changes shall be submitted in the following format to the Office of the Senior Procurement Executive (OSPE), 400 7th Street, SW., Washington, DC 20590:

(1) *Problem:* Succinctly state the problems created by current (TAR) 48 CFR chapter 12 language and describe the factual or legal reasons necessitating regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language (if applicable), and crossing out the deleted words with a horizontal line. Insert proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how it will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other information and documents such as statutes, legal decisions, regulations, reports, etc., that may be helpful.

(4) *Point of contact:* Provide a point of contact who can answer questions regarding the recommendation.

(b) The (TAR) 48 CFR chapter 12 is maintained by the SPE through the TAR/TAM change process. This process consists of input from various DOT elements including representatives from DOT OAs specifically designated to formulate Departmental acquisition policies and procedures.

(1) *Transportation Acquisition Circular (TAC).* TACs (*see* (TAR) 48 CFR 1201.301–72) will be used to amend (TAR) 48 CFR chapter 12.

(2) *TAR Notice (TN).* (i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To quickly promulgate selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which may be effective for a period of 1 year or less.

(ii) Each TN will expire by a specific date.

1201.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in TACs or TNs to the effect that the material therein is ''effective upon receipt,'' ''upon a specified date,'' or that changes set forth in the document are ''to be used upon receipt,'' mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, solicitations in process or completed negotiations when the TAC or TN is received, new information such as forms and clauses, need not be included if the chief of the contracting office determines that it would not be in the best interest of the Government to include the new information.

1201.301–72 TAC or TN numbering.

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number ''01'' prefixed by the last two digits of the fiscal year (*e.g.*, TNs 04–01 and 04–02 indicate the first two TNs issued in fiscal year 2004).

1201.304 Agency control and compliance procedures.

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal (TAR) 48 CFR chapter 12 change process that involves input from many DOT elements including OA representatives on the Procurement Management Council. The OA member shall represent their OA's viewpoint along with Departmentwide considerations in reaching a decision on (TAR) 48 CFR chapter 12 changes.

(b) OA-unique regulations will not be processed through the TAR/TAM change process, but shall be reviewed by OA legal counsel and submitted to the OSPE for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

Subpart 1201.4–70—Deviations From the FAR and TAR

1201.403 Individual deviations.

The Head of the Contracting Activity, or designee with a rank that is no lower than that of Senior Executive Service (SES) official or that of a Flag Officer, may authorize individual deviations (unless (FAR) 48 CFR 1.405(e) applies). However, see TAM 1201.403.

1201.404 Class deviations.

The SPE may grant in writing class deviations from the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12, unless (FAR) 48 CFR 1.405(e) applies.

Subpart 1201.6—Career Development, Contracting Authority and Responsibilities

1201.602–3 Ratification of unauthorized commitments.

(b) *Policy*. DOT policy requires that all procurement decisions shall be made only by Government officials having authority to carry out such acquisitions. Procurement decisions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Disciplinary action against an employee who makes an unauthorized commitment may be considered.

1201.603–1 General.

Each DOT OA is responsible for appointing its contracting officers.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Subpart 1202.1—Definitions

Sec.
1202.1 Definitions.

Subpart 1202.70—Internet Links

1202.7000 General.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1202.1—Definitions

1202.1 Definitions.

Agency, Federal agency or *Executive agency* means the Department of Transportation.

Chief Information Officer means the Director of the Office of the Chief Information Officer (CIO) (S–80).

Chief of the Contracting Office (COCO) means the individual(s) responsible for managing the contracting office(s) within an Operating Administration.

Contracting activity includes all the contracting offices within an Operating Administration and is the same as the term ''procuring activity.''

Contracting officer (CO) means an individual authorized by virtue of their position or by appointment to perform the functions assigned by the Federal Acquisition Regulation (FAR), the Transportation Acquisition Regulation (TAR) and Transportation Acquisition Manual (TAM).

Department of Transportation means all of the Operating Administrations included within the Department of Transportation (DOT).

Head of the agency or *agency head* for Departmental procurement means the Deputy Secretary except for acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

Head of the Contracting Activity (HCA) means the individual responsible for managing the contracting offices within an Operating Administration who is a member of the Senior Executive Service or a flag officer and is the same as the term ''Head of the Procuring Activity.''

Head of the Operating Administration (HOA) means the individual appointed by the President to manage the operating administration.

Operating Administration (OA) means the following components of DOT:

(1) Federal Aviation Administration (FAA); (FAA is exempt from FAR, TAR and TAM pursuant to the Department of Transportation and Related Agencies Appropriations Act, 1996, Public Law 104–50;

(2) Federal Highway Administration (FHWA);

(3) Federal Motor Carrier Safety Administration (FMCSA);

(4) Federal Railroad Administration (FRA);

(5) Federal Transit Administration (FTA);

(6) Maritime Administration (MARAD);

(7) National Highway Traffic Safety Administration (NHTSA);

(8) Office of the Secretary of Transportation (OST);

(9) Research and Special Programs Administration (RSPA);

(10) Saint Lawrence Seaway Development Corporation (SLSDC).

Senior Procurement Executive (SPE) means the Director of the Office of the Senior Procurement Executive (M–60).

Small Business Specialist (SBS) means the individual appointed by each HCA to assist the Director, Office of the Small and Disadvantaged Business Utilization in carrying out the purpose of the Small Business Act.

Subpart 1202.70—Internet Links

1202.7000 General.

Most documents cited throughout (TAR) 48 CFR chapter 12, can be found on the internet. (TAR) 48 CFR chapter 12 will cite the corresponding internet address.

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101–3 Agency regulations.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.
1203.204 Treatment of violations.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.
1203.303 Reporting suspected antitrust violations.

Subpart 1203.4—Contingent Fees

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.
1203.502–2 Subcontractor kickbacks.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1203.1—Safeguards

1203.101–3 Agency regulations.

(b) 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, takes precedence over the DOT regulation at 49 CFR part 99.

Subpart 1203.2—Contractor Gratuities to Government Personnel

1203.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (*e.g.*, the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct.

(c) The COCO shall report suspected violations to the Office of the Inspector General (OIG) (J–1), 400 7th Street, SW., Washington, DC 20590, with a copy to General Counsel (C–1) and the OA's Chief Counsel.

1203.204 Treatment of violations.

(a) The HCA is authorized to determine whether a Gratuities clause violation has occurred. If the HCA has been personally and substantially involved in the procurement,

Government legal counsel advice should be sought to determine if a substitute for the HCA should be designated.

(b) The COCO shall ensure that the contractor is afforded the hearing procedures required by (FAR) 48 CFR 3.204(b). Government legal counsel should be consulted regarding the appropriateness of the hearing procedures.

(c) If the HCA determines that the alleged gratuities violation occurred during the ''conduct of an agency procurement'' the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

Subpart 1203.3—Reports of Suspected Antitrust Violations

1203.301 General.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

1203.303 Reporting suspected antitrust violations.

(b) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 1203.4—Contingent Fees

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) and (b)(4) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

1203.502–2 Subcontractor kickbacks.

(g) The same procedures contained in (TAR) 48 CFR 1203.203 shall also be followed for subcontractor kickbacks.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.1—Contract Execution

Sec.
1204.103 Contract clause.

Subpart 1204.8—Government Contract Files

1204.804–5 Procedures for closing out contract.
1204.804–570 Supporting closeout documents.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1204.1—Contract Execution

1204.103 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, filled in as appropriate, in solicitations and contracts when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

Subpart 1204.8—Government Contract Files

1204.804–5 Procedures for closing out contract files.

1204.804–570 Supporting closeout documents.

(a) When applicable (see paragraphs (a)(1) through (4) of this section) and prior to contract closeout, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms from the contractor to facilitate contract closeout.

(1) Form DOT F 4220.4, Contractor's Release, see (FAR) 48 CFR 52.216–7;

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts, (FAR) 48 CFR 52.216–7;

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement, see (FAR) 48 CFR 4.804–5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts *http://www.dior.whs.mil/forms/DD0882.PDF*, see (FAR) 48 CFR 52.227–14.

(b) The forms listed in paragraph (a) of this section are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. However, the forms may also be used for closeout of other contract types or when necessary to protect the Government's interest.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

Sec.
1205.101 Methods of disseminating information.

Subpart 1205.4—Release of Information

1205.402 General public.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1205.1—Dissemination Of Information

1205.101 Methods of disseminating information.

(b) The DOT Office of Small and Disadvantaged Business Utilization (S–40), 400 7th Street, SW., Washington, DC 20590 publishes a Procurement Forecast of planned procurements each fiscal year on their Web site at: *http://osdbuweb.dot.gov/business/procurement/forecast.html*.

Subpart 1205.4—Release of Information

1205.402 General public.

(a) Upon request, DOT will furnish the general public with the following information on proposed contracts and contract awards:

(1) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms invited to submit sealed bids or proposals;

(2) Prior to the opening of sealed bids or the closing date for receipt of proposals, the names of firms which attended pre-proposal or pre-bid conferences, if any;

(3) After the opening of sealed bids, names of firms which submitted bids; and

(4) After contract award, the names of firms which submitted proposals.

(b) Requests for other specific information shall be processed in accordance with the DOT Freedom of Information Act rules and regulations ((TAR) 48 CFR 1224.203).

PART 1206—COMPETITION REQUIREMENTS

Subpart 1206.5—Competition Advocates

Sec.
1206.501 Requirement.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

The DOT Senior Competition Advocate (SCA) is the Deputy Assistant Secretary for Administration.

PART 1207—ACQUISITION PLANNING

Subpart 1207.3—Contractor Versus Government Performance

Sec.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

DOT follows OMB Circular A–76, Performance of Commercial Activities, and (FAR) 48 CFR 7.3 when cost comparisons between Government and contractor performance are conducted.

1207.305 Solicitation provisions and contract clause.

The contracting officer may insert clause (TAR) 48 CFR 1252.237–73, Key Personnel, in solicitations and contracts when the acquisition is conducted pursuant to OMB Circular A–76 and meets the clause prescription requirements at (TAR) 48 CFR 1237.110(b).

PART 1211—DESCRIBING AGENCY NEEDS

Subpart 1211.1—Selecting and Developing Requirements Documents

Subpart 1211.2—Using and Maintaining Requirements Documents

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1211.1—Selecting and Developing Requirements Documents

1211.101 Order of precedence for requirements documents.

Safeguards to ensure safety, security (including sensitive information and information technology security) and environmental protection shall be included, as applicable, in requirements documents.

Subpart 1211.2—Using and Maintaining Requirements Documents

1211.204–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

PART 1213—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at $2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private non-Government training while conducting the contracted-for training is permitted.

1213.7101 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (*e.g.*, purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT. (**Notice:** The Secretary of Transportation has determined that the certification required by (TAR) 48 CFR 1252.237–71 shall be retained in accordance with Section 4301(b)(1)(B)(i)(II) of the Federal Acquisition Reform Act (Public Law 104–106, 41 U.S.C. 425, note) and *DOT Memorandum dated July 17, 1996*.)

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains information sufficient to reliably describe the certified data submitted. For example, this type of information includes dated material such as resumes and company or personnel qualifications.

PART 1214—SEALED BIDDING

Subpart 1214.3—Submission of Bids

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

(b)(1) Contracting officers may permit telegraphic bids to be communicated by means of a telephone call from the telegraph office to the designated office provided that procedures and controls have been established by the COCO for receiving and safeguarding these incoming bids.

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.2—Solicitation and Receipt of Proposals and Information

Subpart 1215.4—Contract Pricing

Subpart 1215.6—Unsolicited Proposals

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1215.2—Solicitation and Receipt of Proposals and Information

1215.207 Handling proposals and information.

(a) Offeror's proposals and information received in response to a

request for information shall be marked as required by TAM 1203.104–4, as applicable.

(b) Proposals may be released outside the Government whenever it is the only means of receiving the most competent technical and/or management evaluation available.

Subpart 1215.4—Contract Pricing

1215.404 Proposal analysis.

1215.404–470 Payment of profit or fee.

The contracting officer shall not pay profit or fee on undefinitized contracts or undefinitized contract modifications. Any profit or fee earned shall be paid after the contract or modification is definitized.

Subpart 1215.6—Unsolicited Proposals

1215.602 Policy.

DOT's policy encourages submission of new and innovative ideas that will support DOT's mission. Through the various Operating Administrations (OAs), DOT is responsible for transportation safety improvements, international transportation agreements and the continuity of transportation services in the public interest.

1215.603 General.

DOT will accept unsolicited proposals from any entity for review and consideration. However, DOT will not pay any costs associated with the preparation of these proposals. Proposals that do not meet the definition and applicable content and marking requirements of (FAR) 48 CFR 15.6 will not be considered under any circumstances and will be returned to the submitter.

1215.604 Agency points of contact.

(a) The DOT does not have a centralized location to receive unsolicited proposals. The type of effort submitted in the proposal determines which DOT OA should receive and evaluate the proposal.

(b) Unsolicited proposals should be submitted to the responsible OA contracting office for appropriate handling. Specific information concerning the mission of each DOT OA is available on the worldwide web at http://www.dot.gov. Prospective contractors are urged to contact these contracting/procurement offices prior to submitting a proposal to ensure that the unsolicited proposal reaches the correct contracting office for action. This action will reduce unnecessary paperwork and wasted time for both the Government and the prospective contractors.

1215.606 Agency procedures.

(a) The Chief of the Contracting Office is responsible for establishing procedures for controlling unsolicited proposals received in the contracting office. Within ten working days after receipt of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of (FAR) 48 CFR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter giving the reasons for noncompliance.

(b) The OA contracting office is the designated point of contact for receipt and handling of unsolicited proposals. Persons within DOT who receive unsolicited proposals, such as technical personnel, shall forward the document to their responsible contracting office.

1215.606–1 Receipt and initial review.

(a) The agency contact point must make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606–1(a), the agency contact point must acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606–1(a), the agency contact point must return the proposal within three calendar days after making the determination. The agency point of contact must inform the offeror, in writing, of the reasons for returning the proposal.

1215.606–2 Evaluation.

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office must neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If additional information from the offeror is required by the evaluating office, the evaluator must convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluator recommends acceptance of the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

Subpart 1216.4—Incentive Contracts

Subpart 1216.5—Indefinite-Delivery Contracts

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 1216.4—Incentive Contracts

1216.406–70 DOT contract clauses.

(a) As authorized by (FAR) 48 CFR 16–406(e), the contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–72, Performance Evaluation Plan, in all cost-plus-award-fee solicitations and contracts.

(c) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.505 Ordering.

(b)(5) Unless otherwise designated by the Head of the Operating Administration, the Competition Advocate for the Operating Administration (OA) is designated as the OA Task and Delivery Order Ombudsman. If any corrective action is needed after reviewing complaints from

contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer. Issues that cannot be resolved within the OA, shall be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution. The DOT Task and Delivery Order Ombudsman is located in the Office of the Senior Procurement Executive.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.216–74, Settlement of Letter Contract, in all definitized letter contracts.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

Sec.
1217.7000 Definition.
1217.7001 Clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7000 Definition.

Lay Days means the time allowed to the master of a vessel for loading and unloading the same.

1217.7001 Clauses.

(a) The clause at (TAR) 48 CFR 1252.217–70, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (TAR) 48 CFR 1252.217–70, Guarantee, is 60 days. In certain instances, it may be advisable for the contracting officer to include a contract clause for a guarantee period longer than 60 days. These instances are as follows:

(i) If, as result of a full inquiry, the contracting officer determines that there will be no increased costs as a result of a longer guarantee period, the contracting officer may substitute guarantee longer than the usual 60 days; or

(ii) When the contracting officer's inquiry discloses that increased costs will result or are expected to result from a longer guarantee period, the contracting officer shall submit a letter to the Chief of the Contracting Office, requesting approval for use of guarantee period in excess of 60 days. The letter must contain sufficient facts to justify the use of a longer guarantee period. Upon approval, the contracting officer may insert a longer period in the first sentence of the clause at (TAR) 48 CFR 1252.217–70, Guarantee.

(b) The following clauses are required:

(1) (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74; and,

(2) (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80.

(c) (TAR) 48 CFR 1252.217–75 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico.

(d) Unless inappropriate, the clauses set forth in (TAR) 48 CFR 1252.217–71 through (TAR) 48 CFR 1252.217–74 and (TAR) 48 CFR 1252.217–76 through (TAR) 48 CFR 1252.217–80 shall be included.

(e) (TAR) 48 CFR 1252.217– may be included in negotiated solicitations and contracts to be performed outside the United States.

PART 1219—SMALL BUSINESS PROGRAMS

Subpart 1219.2—Policies

Sec.
1219.201 General policy.

Subpart 1219.8—Contracting with the Small Business Administration (The 8(a) Program)

1219.800 General.
1219.811–3 Contract clauses.
1219.812 Contract administration.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1003 Purpose.
1219.1005 Applicability.
Appendix A to Part 1219—Targeted Industry Categories

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1219.2—Policies

1219.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (S–40), is responsible for carrying out the functions and duties in sections 8, 15, and 31 of the Small Business Act, as amended. (15 U.S.C. 637, 644, and 657.)

Subpart 1219.8—Contracting with the Small Business Administration (The 8(a) Program)

1219.800 General.

(f) The Small Business Administration (SBA) and DOT have entered into a Partnership Agreement (PA) authorizing DOT contracting officers to enter into direct 8(a) contracts on behalf of SBA.

1219.811–3 Contract clauses.

(d)(3) When an acquisition is processed pursuant to the DOT/SBA Partnership Agreement, the contracting officer shall use the clause at (FAR) 48 CFR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III, (TAR) 48 CFR 1252.219–72.

(f) The contracting officer shall insert the clause at 1252.219–71, Section 8(a) Direct Awards, in all solicitations and contracts processed under the PA. In accordance with the CAAC Letter 98–3, the following FAR clauses shall not be used when processing a Direct 8(a) award under the MOU: (FAR) 48 CFR 52.219–11, Special 8(a) Contract Conditions, (FAR) 48 CFR 52.219–12, Special 8(a) Subcontract Conditions, and (FAR) 48 CFR 52.219–17, Section 8(a) Award.

1219.812 Contract administration.

(d) All direct 8(a) awards made pursuant to the PA are subject to 15 U.S.C. 637(a) (21). These contracts contain the clause at (TAR) 48 CFR 1252.219–71, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

Subpart 1219.10—Small Business Competitiveness Demonstration Program

1219.1003 Purpose.

(b) Contracting officers shall use the targeted industry categories listed at (TAR) 48 CFR 1219.1005(b) to expand small business participation in the small business competitive demonstration program.

1219.1005 Applicability.

(b) *Targeted industry categories.* DOT's targeted industry categories are shown in Appendix A to this part.

APPENDIX A TO PART 1219

Targeted industry categories*	FPDS products and service code
(1) Engineering Development	AT94
(2) Systems Engineering Services (Only).	R414

APPENDIX A TO PART 1219—Continued

Targeted industry categories*	FPDS products and service code
(3) Radio/TV Communication Equipment (except airborne).	5820
(4) Maintenance, Repair, and Rebuilding of engines, turbines, components and weapons equipment.	J028/J010
(5) ADP Central Processing Units:	
Analog	7020
Digital	7021
Hybrid	7022
(6) ADP Support Equipment	7035
(7) ADP Components	7050
(8) ADP Development Services and ADP Teleprocessing and Timesharing Services.	D302/D305
(9) Gas Turbines and Jet Engines, Aircraft; and Components.	2840
(10) Radar Equipment (except airborne) and Navigation and Navigational Aids (basic research).	5840/AT31

*The industry categories were derived from Federal Procurement Data System Product and Service Codes Manual.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101–70 Admittance of union representatives to DOT installations.
1222.101–71 Contract clauses.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.
1222.406–9 Withholding from or suspension of contract payments.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101–70 Admittance of union representatives to DOT installations.

(a) It is DOT policy to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DOT labor coordinator, the Office of the General Counsel, Office of Environmental Law, Civil Rights and General Law (C–10), within the Office of the Secretary of Transportation or corresponding OA labor advisor, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

1222.101–71 Contract clauses.

(a) When applicable, the contracting officer may insert the clause at (TAR) 48 CFR 1252.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) When applicable the contracting officer may insert the clause at (TAR) 48 CFR 1252.222–71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

Subpart 1222.4—Labor Standards for Contracts Involving Construction

1222.406 Administration and enforcement.

1222.406–9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.* (1) *Forwarding wage underpayments to the Secretary of the Treasury.* The contracting officer shall ensure that a completed Form DOT F 4220.7, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) must receive this form with a completed Standard Form (SF) 1093, Schedule of Withholding Under the Davis-Bacon Act or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

PART 1223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

Sec.
1223.303 Contract clause.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1223.3—Hazardous Material Identification and Material Safety Data

1223.303 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7000 Contract clauses.

(a) Where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–72, Protection of Human Subjects. Upon written request, copies of the applicable National Highway Traffic Safety Administration (NHTSA) policies and procedures may be obtained from NHTSA's Associate Administrator for Administration (NPO–200), 400 7th Street, SW., Washington DC 20590.

(c) Pursuant to Executive Order 13043, Increasing Seat Belt Use in the United States, the contracting officer shall insert the clause at (TAR) 48 CFR 1252.223–73, Seat Belt Use Policies and Programs in all solicitations and contracts, exceeding the simplified acquisition threshold.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102–70 General.
1224.103 Procedures.

Subpart 1224.2—Freedom of Information Act

1224.203 Policy.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1224.1—Protection of Individual Privacy

1224.102–70 General.

(a) Systems of records to which the Privacy Act applies shall not be released except by the Government regardless of whether the Government or a contractor acting on behalf of the Government is maintaining the records. Examples of systems of records are:

(1) Personnel, payroll and background records personal to any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applications for licenses; and

(3) Any other detailed record containing information identifiable with a particular person.

(b) Examples of systems of records to which the Privacy Act does not apply are:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) Records generated on contract students pursuant to their attendance (*e.g.*, admission forms, grade reports) when contracting with an educational institution. These records must be similar to those maintained on other students, must not reveal their identities, and must not be commingled with records of other students.

1224.103 Procedures.

DOT rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

Subpart 1224.2—Freedom of Information Act

1224.203 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR Part 7. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

PART 1227—PATENTS, DATA, AND COPYRIGHTS

Subpart 1227.3—Patent Rights Under Government Contracts

Sec.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.304 Procedures.

1227.304–5 Appeals.

(b) Agency actions listed at (FAR) 48 CFR 27.304–5(a)(1) and (a)(3) through (a)(5) may be appealed to the Head of the Contracting Activity (HCA). Actions under this section shall be coordinated with the legal counsel of the responsible office.

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304–5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA shall issue a determination within 45 days from the date the contractor's appeal is received.

(c) Appeals of decisions rendered under (FAR) 48 CFR 27.304–5(a)(2) are subject to the following requirements:

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304–5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA may hold an informal hearing if deemed appropriate or at the request of the contractor. The informal hearing shall be held after all fact-finding is completed.

(i) If a hearing is held, there shall be a transcribed record of the same. A copy of the transcript shall be available to the contractor at cost.

(ii) Transcription of the hearing may be waived by mutual agreement of the parties.

(3) The HCA shall designate an impartial fact-finding official. The official conducting the fact-finding shall prepare findings of fact and transmit them to the HCA promptly after the conclusion of the fact-finding proceeding along with a recommended determination.

(i) A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the HCA; and, upon request by the contractor oral arguments will be held before the HCA as part of an informal hearing. The HCA will make the final determination as to whether the initial agency action was appropriate under the relevant laws and procedures (*See* 1227.304–5(c)(4)).

(ii) Any portion of the informal hearing that involves testimony or evidence shall be closed to the public. Agencies shall not disclose any such information obtained in the course of the appeal to persons outside the government except when such release is authorized by the contractor (assignee or licensee).

(4) The HCA's final determination shall be based on the findings of facts, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The HCA may reject only those facts that have been found clearly erroneous and must explicitly state the rejection and the basis for the contrary finding. The HCA shall provide the contractor (assignee or exclusive licensee) a written determination by certified or registered mail no later than 90 days after fact-finding is completed or no later than 90 days after oral arguments, whichever is later.

1227.305 Administration of patent rights clauses.

1227.305–4 Conveyance of invention rights acquired by the Government.

Solicitations and contracts that include a patent rights clause must provide the contractor the means to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds and Other Financial Protections

Sec.

Subpart 1228.3—Insurance

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

1228.106–1 Bonds and bond-related forms.

(b) Standard Form (SF) 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106–1(b), shall provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor. Forms other than the SF 25 (*e.g.*, a commercial form) shall not

be used by contractors when a performance bond is required.

1228.106–6 Furnishing of information.

(b) When furnishing surety information, the inquirer should also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act (40 U.S.C. 3131–3134) are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. To insure proper payment to such employees, this investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3141), and Copeland (Anti-Kickback) Act (41 U.S.C. 51–58).

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(b), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement ''Certified to be a true and correct copy'' followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7, (TAR) 48 CFR 1224.203).

1228.106–70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase ''a partnership composed of.'' If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

1228.106–71 Performance and payment bonds for certain contracts.

1228.106–7100 Waiver.

(a) Pursuant to the authority vested in the Secretary of Transportation by the Miller Act, the requirements of 40 U.S.C. 3131 *et seq.* are waived, to the extent authorized in 40 U.S.C. 3134(b), with respect to contracts for the construction, alteration, or repair of vessels when the contract is made under sections 1535 and 1536 of Title 31, the Merchant Marine Act 1936 (46 App. U.S.C. 1101 *et seq.*), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 *et seq.*), regardless of the terms of the contracts as to payment or title.

(b) The Miller Act's requirement that certain contracts have payment bonds in place in order to protect the public, including the Government, material, men and laborers is not generally necessary with respect to the classes of contracts described under (TAR) 48 CFR 1228.106–7100(a). Inasmuch as the Government would directly or indirectly bear the burden of premiums for performance and payment bonds obtained in connection with such contracts, a substantial savings can be made by waiving the requirement that they be obtained. However, unusual circumstances may arise in which either payment or performance bonds, or both, will be advantageous in connection with certain such contracts.

1228.106–7101 Exception.

A performance and payment bond for the contracts described under (TAR) 48 CFR 1228.106–7100(a) may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under (TAR) 48 CFR 1228.106–7100(a) shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

1228.106–470 Contract clause.

The contracting officer must insert the clause at (TAR) 48 CFR 1252.228–73, Notification of Miller Act Payment Bond Protection, in solicitations and contracts when payment bonds are required.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at (TAR) 48 CFR 1252.228–70 through 1252.228–72, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–70, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) The contracting officer must insert the clause at (TAR) 48 CFR 1252.228–71, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of persons, or damage or loss of property, unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of

(1) The aircraft, engine or propeller, or

(2) The flight of, or an object falling from, the aircraft, engine, or propeller. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (TAR) 48 CFR 1252.228–72

prescribed in paragraph (d)(1) of this section shall be used.

(1) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.228–72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time must other personnel be permitted to take command of the aircraft.

1228.307–1 Group insurance plans.

(a) *Prior approval requirements.* The contracting officer shall instruct the contractor on a contract-by-contract basis on proposed purchases of group insurance plans. Legal advice should be sought where necessary on the advantages to the Government.

1228.311–1 Contract clause.

The contracting officer shall insert the clause at (FAR) 48 CFR 52.228–7, Insurance Liability to Third Persons, as prescribed in FAR 28.311–1 unless it is waived by an official one level above the contracting officer.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.2—Contracts With Commercial Organizations

Sec.
1231.205 Selected costs.
1231.205–32 Precontract costs.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1231.2—Contracts With Commercial Organizations

1231.205 Selected costs.

1231.205–32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. No DOT employee can authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (TAR) 48 CFR 1252.231–70, Date of Incurrence of Costs, may be inserted in the resultant contract.

PART 1232—CONTRACT FINANCING

Subpart 1232.70—Contract Payments

Sec.
1232.7002 Invoice and voucher review and approval.
Appendix A to Part 1232—Instructions for Completing The SF 1034
Appendix B to Part 1232—Instructions for Completing the SF 1035

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1232.70—Contract Payments

1232.7002 Invoice and voucher review and approval.

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher in order to receive payment under the contract. The invoice or voucher may be on a form or company letterhead as long as it meets the requirements of the Management and Budget (OMB) regulation at 5 CFR part 1315 as implemented by (FAR) 48 CFR Subpart 32.9, and the contract.

(b) Under other than fixed-price contracts, the contracting office shall require the contractor to submit the SF 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by Appendix A to this part, Instructions for Completing the SF 1034, and Appendix B to this part, Instructions for Completing the SF 1035.

APPENDIX A TO PART 1232—INSTRUCTIONS FOR COMPLETING THE SF 1034

[The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The numbered items correspond to the entries on the form.]

Caption on the SF 1034	Data to be inserted in the block
1. U.S. Department, Bureau, or establishment and location	Name and address of the contracting office which issued the contract.
2. Date voucher prepared	Date voucher submitted to the designated billing office cited under the contract or order.
3. Contract No. and date	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. Requisition No. and date	Leave blank or fill-in in accordance with the instructions in the contract.
5. Voucher No.	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. Schedule No.; paid by; date invoice received; discount terms; payee's account No.; shipped from/to; weight; government B/L.	Leave all these blocks blank.
7. Payee's name and address	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. Number and date or order	Leave blank. (See #3 above.)
9. Date of delivery or service	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. Articles or services	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. Quantity; unit price; (cost; per)	Leave blank.
12. Amount	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below	Do NOT write or type below this line.

Appendix B to Part 1232—Instructions for Completing the SF 1035

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034. Ensure that the contract and, if applicable, order number, are shown on each continuation sheet. Use as many sheets as necessary to show the information required by the contract, contracting officer, or responsible audit agency; however, if more than one sheet of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor.* List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime.* List each labor category, rate per labor hour, hours worked, and the extended total labor dollars per labor category. Note: Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting officer's written authorization to the contractor.

(3) *Fringe Benefits.* If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment.* Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at $5,000 or more must be itemized. See (FAR) 48 CFR part 45, Government Property, for reporting of property.

(5) *Travel.* List the name and title of traveler, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (i.e., airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs.* Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs.* Cite the sum of categories (1) through (6) above.

(8) *Overhead.* Cite the rate, base, and extended amount.

(9) *G&A Expense.* Cite the rate, base, and extended amount.

(10) *Total Costs.* Cite the sum of categories (7) through (9) above.

(11) *Fee.* Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed.* Enter this amount on the SF 1034.

Completion Voucher

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.1 Protests

Sec.
1233.103 Protests to the agency.
1233.104 Protests to GAO.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.214 Alternative dispute resolution (ADR).

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1233.1—Protests

1233.103 Protests to the agency.

(c) DOT Operating Administrations (OAs) shall consider the use of Alternate Dispute Resolution (ADR) in all agency protest actions.

1233.104 Protests to GAO.

The protest process at the Government Accountability Office (GAO) may include ADR assistance by GAO. The contracting officer shall, with advice of counsel, explore the possibility of using ADR for all GAO protests.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

For DOT contracts, the Board of Contract Appeals (BCA) referenced at (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (S–20), 400 7th Street, SW., Washington, DC 20590. The DOTBCA Rules of Procedure are contained in 48 CFR chapter 63, part 6301.

1233.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1990, Public Law 101–552, as reauthorized by the Administrative Dispute Resolution Act (ADRA) of 1996, Public Law 104–320, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, either before or after appeal, and for other purposes. ADR procedures may be used when:

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim. Use of ADR shall be coordinated with counsel. For all matters filed with the DOTBCA, the DOTBCA Alternate Dispute Resolution (ADR) procedures contained in 48 CFR Chapter 63, Section 6302.30, ADR Methods (Rule 30), will be distributed to the parties, if ADR procedures are used.

(d) Pursuant to the ADRA, DOT has appointed a Dispute Resolution Specialist, who is responsible for the operations of the Center for Alternative Dispute Resolution, (C–4). The Center may provide an internal DOT neutral agreeable to the parties to conduct any of the alternative means of dispute resolution set forth in the ADRA, 5 U.S.C. 571(3) on a non-reimbursable basis for DOT operating administrations and their contracting partners. Alternative means of dispute resolution include settlement negotiations, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods. The Center may also arrange for an external public or private neutral at the parties' expense.

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.

Subpart 1235.70—Research Misconduct

1235.7000 Contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

1235.003 Policy.

(b) Cost sharing. DOT cost sharing policies shall be in accordance with (FAR) 48 CFR 16.303, (FAR) 48 CFR 42.707(a), and Operating Administration (OA) procedures.

Subpart 1235.70—Research Misconduct

1235.7000 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.235–70, Research Misconduct, in all solicitations and contracts for research and development. For further information, see DOT's Implementation Guidance for Executive Office of the President, Office of Science and Technology Policy, ''Federal Policy on Research Misconduct,'' dated February 2002.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.5—Contract Clauses

Sec.
1236.570 Special precautions for work at operating airports.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (TAR) 48 CFR 1252.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.
1237.110 Solicitation provisions and contract clauses.

Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services

1237.7000 Policy.
1237.7001 Certification of data.
1237.7002 Applicability.
1237.7003 Solicitation provisions and contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1237.1—Service Contracts—General

1237.110 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237–70, Qualifications of Contractor Employees, in all solicitations and contracts for supplies and/or services where contractor employees will have access to Government facilities, sensitive information, including proprietary data and/or resources.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.237–73, Key Personnel, in solicitations and contracts for services when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel.

Subpart 1237.70—Department of Transportation Procedures for Acquiring Training Services

1237.7000 Policy.

When training services are provided under contract, DOT policy requires that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all contracts (as defined in FAR 2.101) awarded by DOT for training services when DOT controls the content and/or presentation of the course. This policy does not apply to courses attended by DOT employees that are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

1237.7003 Solicitation provisions and contact clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains sufficient descriptive information (*i.e.*, dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1239—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1239.1—General

Sec.
1239.70 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1239.1—General

1239.70 Solicitation provision and contract clause.

The contracting officer shall insert the provision at (TAR) 48 CFR 1252.239–71, Information Technology Security Plan and Accreditation, and the clause at (TAR) 48 CFR 1252.239–70, Security Requirements for Unclassified Information Technology Resources, in all solicitations and contracts, exceeding the micro-purchase threshold, that include information technology services.

PART 1242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1242.70—Contract Administration Clauses

Sec.
1242.7000 Contract clauses.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1242.70—Contract Administration Clauses

1242.7000 Contract clauses.

(a) The contracting officer may use the clause at (TAR) 48 CFR 1252.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in DOT research contracts with educational institutions that require the release or coordination of information.

(b) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–71, Contractor Testimony, in all solicitations and contracts issued by National Highway Traffic Safety Administration (NHTSA). Other Operating Administrations (OAs) may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at (TAR) 48 CFR 1252.242–72, Dissemination of Contract Information, in all DOT contracts, except contracts that require the release or coordination of information.

(d) The contracting officer shall insert the clause at (TAR) 48 CFR 1252.242–73, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the

contract to perform functions of a technical nature.

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.5—Management of Government Property in the Possession of Contractors

Sec.
1245.505 Records and reports of Government property.
1245.505–14 Reports of Government property.
1245.505–70 Contract clauses.
1245.508–2 Reporting results of inventories.
1245.511 Audit of property control system.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.505 Records and reports of Government Property.

1245.505–14 Reports of Government property.

When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505–14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on Form DOT F 4220.43, Contractor Report of Government Property.

1245.505–70 Contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.245–70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

1245.508–2 Reporting results of inventories.

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

(1) Land and rights therein;

(2) Other real property;

(3) Plant equipment;

(4) Special test equipment; agency peculiar property; and

(5) Special tooling; and

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident.

1245.511 Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of Government-furnished property;

(2) Failure of the contractor to submit the annual property reports required by (TAR) 48 CFR 1245.505–14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies must be corrected.

PART 1246—QUALITY ASSURANCE

Subpart 1246.1—General

Sec.
1246.101 Definitions.
1246.101–70 Additional definitions.

Subpart 1246.7—Warranties

1246.705 Limitations.
1246.706 Warranty terms and conditions.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1246.1—General

1246.101 Definitions.

1246.101–70 Additional definitions.

At no additional cost to the Government means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Major acquisition means an acquisition or project as defined by TAM Chapter 1234, Major System Acquisition.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

Subpart 1246.7—Warranties

1246.705 Limitations.

(a) The following restrictions are applicable to DOT contracts:

(1) The contractor shall not be required to honor the warranty on any property furnished by the Government except for:

(i) Defects in installation; and

(ii) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

(2) Any warranty obtained shall specifically exclude coverage of damage in time of war (combat damage) or national emergency.

(3) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

(b) [Reserved]

1246.706 Warranty terms and conditions.

(a) When appropriate and cost effective, the contracting officer shall comply with the following requirements when developing the warranty terms and conditions:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the line item conform to the specified Government performance requirements;

(4) Require that all line items and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that if the contractor fails to comply with specification or there are defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements that the contractor must meet;

(8) Ensure that any performance requirements identified as goals or objectives beyond specification requirements are excluded from the warranty provision;

(9) Specify what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date), the ending

of the warranty (*e.g.*, passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (*e.g.*, extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in relation to the warranty coverage;

(11) In addition to combat damage, identify any conditions which will not be covered by the warranty, and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition to the terms and conditions listed in paragraph (a) of this section, the contracting officer shall consider the following when a warranty clause is being used for a major acquisition:

(1) For line items or components which are commercially available, obtaining a warranty as is normally provided by the manufacturer or supplier, in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(2) Obtaining a warranty of compliance with the stated requirements for line items or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract.

(3) The warranty provided under paragraph (b)(2) of this section shall provide that in the event the line items or any components thereof fails to meet the terms of the warranty provided, the contracting officer may:

(i) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(iii) Equitably reduce the contract price.

(4) Inserting remedies, exclusions, limitations and durations, provided these are consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(5) Excluding from the terms of the warranty certain defects for specified supplies (exclusions) and limiting the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(6) Structuring of a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (*e.g.*, where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(c) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

PART 1247—TRANSPORTATION

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

Sec.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

(a) The Maritime Administration (MARAD) is the enforcing agency of the cargo preference statutes. MARAD can assist contractors in locating U.S.-flag carriers and determine when such services are not available and they can assist contracting officers in evaluating costs, services, and other matters regarding ocean transportation.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated ''on board'' bill of lading, for each shipment, no later than 20 days after the vessel's loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier's ocean bill of lading. The documents shall be sent to the Maritime Administration, Office of Cargo Preference, MAR–590, 400 Seventh Street, SW., Washington, DC 20590. The bill of lading shall contain the following information:

(1) Name of sponsoring Government agency or department;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Commodity description;

(8) Gross weight in kilos;

(9) Total ocean freight revenue in U.S. dollars.

PART 1252—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.1—Instructions for Using Provisions and Clauses

Sec.

Subpart 1252.2—Text of Provisions and Clauses

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using Part 1252.

(b) *Numbering.*

(2)(i) *Provisions or clauses that supplement the FAR.*

(A) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (*i.e.*, normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. Operating Administrations (OAs) desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the Office of the Senior Procurement Executive in accordance with (TAR) 48 CFR 1201.304 for possible inclusion in the TAR.

(B) Provisions and clauses used on a one-time basis (*i.e.*, non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA. This authority is permitted subject to:

(*1*) Evidence of legal counsel review in the contract file;

(*2*) Inserting these clauses in the appropriate sections of the uniform contract format; and

(*3*) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

Subpart 1252.2—Text of Provisions and Clauses

1252.211–70 Index for specifications.

As prescribed in (TAR) 48 CFR 1211.204–70, insert the following clause:

Index for Specifications (Apr 2005)

If an index or table of contents is furnished in connection with specifications, such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not a part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (TAR) 48 CFR 1216.203–470, insert the following provision:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (Oct 1994)

Offers shall be evaluated without an amount for an economic price adjustment being added. Offers will be rejected which: (1) Increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

1252.216–71 Determination of award fee.

As prescribed in (TAR) 48 CFR 1216.406, insert the following clause:

Determination of Award Fee (Apr 2005)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within _____ (*insert number*) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at (*identify location of award fee amounts*). Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(End of clause)

1252.216–72 Performance evaluation plan.

As prescribed in (TAR) 48 CFR 1216.406(b), insert the following clause:

Performance Evaluation Plan (Oct 1994)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements, if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216–73 Distribution of award fee.

As prescribed in (TAR) 48 CFR 1216.406(c), insert the following clause:

Distribution of Award Fee (Apr 2005)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee: (*insert appropriate information*)

(b) After the contractor has been paid 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less. Thereafter, base fee and award fee payments may continue.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

1252.216–74 Settlement of letter contract.

As prescribed in (TAR) 48 CFR 1216.603–4, insert the following clause:

Settlement of Letter Contract (Oct 1994)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (*insert number*) dated _____ (*insert effective date*). It supersedes the letter contract and its modification number(s) _____ (*insert number(s)*) and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract (*insert number and modification number(s)* _____ (*insert*

number(s)). Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

1252.217–70 Guarantee.

As prescribed at (TAR) 48 CFR 1217.7001(a), insert the following clause:

Guarantee (Apr 2005)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

1252.217–71 Delivery and shifting of vessel.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Delivery and Shifting of Vessel (Oct 1994)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217–72 Performance.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Performance (Oct 1994)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

1252.217–73 Inspection and manner of doing work.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Inspection and Manner of Doing Work (Oct 1994)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of

welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a ''gas-free'' or ''safe-for-hotwork'' certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ''broom clean.''

(End of clause)

1252.217–74 Subcontracts.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Subcontracts (Oct 1994)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217–75 Lay days.

As prescribed at (TAR) 48 CFR 1217.7001(c) and (d), insert the following clause:

Lay Days (Oct 1994)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

1252.217–76 Liability and insurance.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Liability and Insurance (Oct 1994)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel

and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

1252.217–77 Title.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Title (Oct 1994)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

1252.217–78 Discharge of liens.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Discharge of Liens (Oct 1994)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right in rem of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

1252.217–79 Delays.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Delays (Oct 1994)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the ''Changes'' clause.

(End of clause)

1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at (TAR) 48 CFR 1217.7001(b) and (c), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (Apr 2005)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Occupational Safety and Health Standards for Shipyard Employment (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

1252.219–71 Section 8(a) Direct Awards.

As prescribed in (TAR) 48 CFR 1219.811–3(f), insert the following clause:

Section 8(A) Direct Awards (Apr 2005)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of Transportation. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The responsible SBA district office is: [To be completed by Contracting Officer at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8 (a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To adhere to the requirements of 52.219–14, Limitations on Subcontracting.

(End of clause)

1252.219–72 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III.

As prescribed in (TAR) 48 CFR 1219.811–3(d)(3), substitute the following paragraph for paragraph (c) of the basic FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns.

Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Apr 2005)

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(End of clause)

1252.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (TAR) 48 CFR 1222.101–71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Oct 1994)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222–71 Strikes or picketing affecting access to a DOT facility.

As prescribed in (TAR) 48 CFR 1222.101–71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DOT Facility (Oct 1994)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) Is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

1252.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Dec 1997)

The Contractor has _____ does not have _____ all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within _____ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

1252.223–71 Accident and fire reporting.

As prescribed in (TAR) 48 CFR 1223.7000(a), insert the following clause:

Accident and Fire Reporting (Apr 2005)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Government-owned or leased property, either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram or facsimile transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223–72 Protection of human subjects.

As prescribed in (TAR) 48 CFR 1223.7000(b), insert the following clause:

Protection of Human Subjects (Apr 2005)

The Contractor shall comply with the National Highway Traffic Safety Administration (NHTSA) policies and procedures for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. A copy of the applicable NHTSA policies and procedures shall be provided to offerors and/or contractors upon request. In fulfillment of its assurance:

(a) A committee competent to review projects and activities that involve human subjects shall be established and maintained by the Contractor.

(b) The committee shall be assigned responsibility to determine for each activity planned and conducted that:

(1) The rights and welfare of subjects are adequately protected;

(2) The risks to subjects are outweighed by potential benefits; and

(3) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(c) Committee reviews shall be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(d) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(e) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(f) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(g) The retention period of such records and materials shall be as specified at (FAR) 48 CFR 4.703.

(h) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(Note: If the Contractor has or maintains a relationship with a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and applicable NHTSA policies and procedures, that IRB will be considered acceptable for the purposes of this contract).

(End of clause)

1252.223–73 Seat belt use policies and programs.

As prescribed in (TAR) 48 CFR 1223.7000(c), insert the following clause:

Seat Belt Use Policies and Programs (APR 2005)

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section of NHTSA's Web site at *www.nhtsa.dot.gov*. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, DC metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to help with technical assistance, a simple, user friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1–888–221–0045 or visit its Web site at *www.trafficsafety.org*.

(End of clause)

1252.228–70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (DEC 1997)

(a) Except normal wear and tear, the Government assumes all risk of loss of, or damage to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–71, ''Fair Market Value of Aircraft,'' less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228–71 Fair market value of aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (c), insert the following clause:

Fair Market Value of Aircraft (OCT 1994)

For purposes of the clause entitled ''Loss of or Damage to Leased Aircraft,'' the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $ _____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1252.228–72 Risk and indemnities.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (d), insert the following clause:

Risk and Indemnities (DEC 1997)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.228–73 Notification of Miller Act payment bond protection.

As prescribed in guidance at (TAR) 48 CFR 1228.106–470, insert the following clause:

Notification of Miller Act Payment Bond Protection (Apr 2005)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act, (40 U.S.C. 3131 et al), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

_____
(Name)

_____
(Street Address)

_____
(City, State, Zip Code)

_____
(Contact & Tel. No.)

(End of clause)

1252.231–70 Date of incurrence of costs.

As prescribed in (TAR) 48 CFR 1231.205–32(b), insert the following clause:

Date of Incurrence of Costs (OCT 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1252.235–70 Research misconduct.

As prescribed in (TAR) 48 CFR 1235.7000, insert the following clause:

Research Misconduct (Apr 2005)

(a) *Definitions.* As used in this clause—

Adjudication means the process of reviewing recommendations from the investigation phase and determining appropriate corrective actions.

Complainant is the person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.

DOT Oversight Organization is the DOT operating administration or secretarial office sponsoring or managing Federally funded research.

Evidence includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.

Fabrication is making up data or results and recording or reporting them.

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Inquiry is preliminary information gathering and fact finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.

Investigation is formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion.

Research and Technology Coordinating Council (RTCC) is the lead DOT entity for coordination of all actions related to allegations of research misconduct. The respondent in a research misconduct finding may appeal through the RTCC to the Deputy Secretary of Transportation.

Research Institution includes any contractor conducting research under DOT funded contractual instruments, agreements and similar instruments.

Research misconduct means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.

Research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

Respondent is the person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

(b) *General Guidelines.* (1) Confidentiality. DOT organizations, including research organizations, are required to safeguard the confidentiality of the inquiry, investigation and decision-making processes, including maintaining complete confidentiality of all records and identities of respondents and complainants.

(2) Retaliation prohibited. If a complainant who has reported possible research misconduct alleges retaliation on the part of DOT organization management, the report will be addressed by management officials who will conduct an inquiry into the allegations followed by an appropriate management action.

(3) Separation of Phases. DOT organizations and research organizations must ensure the separation of the Inquiry, Investigation and Determination Phases of this process.

(4) In general, DOT organizations must strive to protect the interests of the Federal Government and the public in carrying out this process.

(c) *Elements to support a finding of research misconduct.* Research institutions (including contractors) that receive Department of Transportation (DOT) funds shall respond to allegations of research misconduct. The following elements describe the type of behavior, level of intent and burden of proof required to support a finding of research misconduct:

(1) There must be a significant departure from the accepted practices of the relevant research community;

(2) The misconduct must have been committed intentionally, or knowingly, or recklessly and;

(3) The allegation must be proven by a preponderance of the evidence.

(d) *DOT Oversight Organization Investigation.* The DOT oversight organization may proceed with its own investigation at any time if:

(1) DOT determines the institution is not prepared to handle the allegation in a manner consistent with this policy;

(2) DOT involvement is needed to protect the public interest, including public health and safety;

(3) The allegation involves an entity of sufficiently small size (or an individual) that it cannot sufficiently conduct the investigation itself.

(4) The DOT oversight organization may take, or cause to be taken, interim administrative actions (including special certifications, assurances, or other administrative actions) when deemed appropriate to protect the welfare of human and animal subjects of research, prevent inappropriate use of Federal funds, or otherwise protect the public interest and safety.

(e) *Investigating research misconduct.* Research Institutions, or in limited circumstances discussed in Section b, the DOT Oversight Organization, shall use the following procedures to investigate allegations of research misconduct:

(1) Inquire promptly into the research misconduct allegation and complete an initial inquiry within 60 calendar days after receipt of the allegation.

(2) Notify the contracting officer immediately, in writing, when an inquiry results in a determination that an investigation is warranted, and promptly begin an investigation.

(3) Ensure the objectivity and expertise of the individuals selected to review allegations and conduct investigations.

(4) Conduct the investigation according to established internal procedures and complete it within 120 calendar days of completing the initial inquiry.

(5) Document the investigation. Include documentation that:

(i) Describes the allegation(s);

(ii) Lists the investigators;

(iii) Describes the methods and procedures used to gather information and evaluate the allegation(s);

(iv) summarizes the records and data compiled, states the findings, and explains the supporting reasons and evidence;

(v) states the potential impact of any research misconduct; and

(vi) describes and explains any institutional sanctions or corrective actions recommended, or imposed as appropriate within its jurisdiction and as consistent with other relevant laws.

(6) Provide the respondent (the person against whom an allegation of research misconduct has been made) with a reasonable opportunity (*e.g.*, 30 calendar days) to review and respond to the investigation report. The respondent's written comments or rebuttal will be made part of the investigative record.

(7) Within 30 calendar days after completion of an investigation, forward investigative reports, documentation, and respondent's response to the contracting officer who will coordinate with the oversight organization(s) sponsoring and/or monitoring the federally funded research.

(8) Time extensions. Contractors should request time extensions as needed, from the contracting officer of the appropriate DOT oversight organization. The contracting officer has discretion to waive time requirements for good cause.

(f) *Activity sanctions or corrective actions.* Upon receipt of the investigative reports from the contractor, the DOT oversight organization, in conjunction with the contracting officer, will review the report and determine the appropriate administrative action to be taken. In deciding what actions to take, the oversight organizations should consider: the severity of the misconduct; the degree to which the misconduct was knowing, intentional or reckless; and whether it was an isolated event or part of a pattern. Sanctions or corrective actions may range as follows:

(1) *Minimal restrictions*—such as a letter of reprimand, additional conditions on awards, requiring third-party certification of accuracy or compliance with particular policies, regulations, guidelines, or special terms and conditions;

(2) *Moderate restrictions*—such as limitations on certain activities or expenditures under an active award, or special reviews of requests for funding;

(3) *More severe restrictions*—such as termination of an active award, or government-wide suspension or debarment.

(i) When the DOT oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent that a finding of research misconduct has been made.

(ii) If there are reasonable indications that criminal violations may have occurred, the DOT oversight organization shall consult with the Office of Inspector General to determine an appropriate course of action, including disbarment or suspension. The DOT oversight organization will notify the respondent in writing of its action, sanctions to be imposed if applicable, and the DOT appeal procedures.

(g) *Appeals and Final Administrative Action.* (1) The Federal Acquisition Regulation (FAR) governs in all matters pertaining to termination of the contract, and suspension/debarment.

(2) In all other cases, the contractor may appeal the sanction or corrective action through the DOT Research and Technology Coordinating Council (RTCC) to the Deputy Secretary of Transportation, in writing within 30 calendar days after receiving written notification of the research misconduct finding and associated administrative action(s). The contractor shall mail a copy of the appeal to the contracting officer.

(3) If there is no request for appeal within 30 calendar days, the administrative actions of the oversight organization shall be final.

(4) If a request for appeal is received by the RTCC within the 30 calendar day limit, the Deputy Secretary may have the RTCC review the appeal and make recommendations.

(5) The RTCC on behalf of the Deputy Secretary will normally inform the appellant of the final decision on an appeal within 60 calendar days of receipt. This decision will then be the final DOT administrative action.

(h) *Criminal or Civil Fraud Violations.* When the oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent. If criminal or civil fraud violations may have occurred, the oversight organization should promptly refer the matter to the DOT Inspector General, the Department of Justice or other appropriate investigative body.

(End of clause)

1252.236–70 Special precautions for work at operating airports.

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

Special Precautions for Work at Operating Airports (Oct 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237–70 Qualifications of contractor employees.

As prescribed in (TAR) 48 CFR 1237.110(a), insert the following clause:

Qualifications of Contractor Employees (Apr 2005)

a. Definitions. As used in this clause—''Sensitive Information'' is any information that, if subject to unauthorized access, modification, loss, or misuse, or is proprietary data, could adversely affect the national interest, the conduct of Federal programs, or the privacy of individuals specified in The Privacy Act, 5 U.S.C. 552a, but has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

b. Work under this contract may involve access to sensitive information which shall not be disclosed by the contractor unless authorized in writing by the contracting officer. To protect sensitive information, the contractor shall provide training to any contractor employees authorized to access sensitive information, and upon request of the Government, provide information as to an individual's suitability to have authorization.

c. The Contracting Officer may require dismissal from work those employees deemed incompetent, careless, insubordinate, unsuitable, or otherwise objectionable, or whose continued employment is deemed contrary to the public interest or inconsistent with the best interest of national security.

d. Contractor employees working on this contract must complete such forms, as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required.

e. The Contractor shall ensure that contractor employees are:

(1) Citizens of the United States of America or an alien who has been lawfully admitted for permanent residence or employment (indicated by immigration status) as evidenced Bureau of Citizenship and Immigration Services documentation; and

(2) Have background investigations according to DOT Order 1630.2B, Personnel Security Management.

f. The Contractor shall immediately notify the contracting officer when an employee no longer requires access to DOT computer systems due to transfer, completion of a project retirement or termination of employment.

g. The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

1252.237–71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:

Certification of Data (Apr 2005)

Notice: The Secretary of Transportation has determined that this certification shall be

retained in accordance with Section 4301(b)(1)(B)(i)(II) of the Federal Acquisition Reform Act (Public Law 104–106, 41 U.S.C. 425, note) and DOT Memorandum dated July 17, 1996.

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (*e.g.*, company profile; qualifications; background statements; brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 and 49 CFR part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: _____

Date: _____

Typed Name and Title:

_____

Company Name: _____

_____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.

(End of provision)

1252.237–72 Prohibition on advertising.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following clause:

Prohibition on Advertising (JAN 1996)

The contractor or its representatives (including training instructors) shall not advertise or solicit business from attendees for private, non-Government training during contracted-for training sessions. This prohibition extends to unsolicited oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes. The contractor agrees to insert this clause in its subcontracts.

(End of clause)

1252.237–73 Key personnel.

As prescribed in (TAR) 48 CFR 1237.110(b), insert the following clause:

Key Personnel (Apr 2005)

(a) The personnel as specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel, as appropriate.

(b) Before removing, replacing, or diverting any of the specified individuals, the Contractor shall notify the contracting officer, in writing, before the change becomes effective. The Contractor shall submit information to support the proposed action to enable the contracting officer to evaluate the potential impact of the change on the contract. The Contractor shall not remove or replace personnel under this contract until the Contracting Officer approves the change.

The Key Personnel under this Contract are: *(specify key personnel)*

(End of clause)

1252.239–70 Security requirements for unclassified information technology resources.

As prescribed in (TAR) 48 CFR 1239.70, insert the following clause:

Security Requirements for Unclassified Information Technology Resources (APR 2005)

(a) The Contractor shall be responsible for Information Technology security for all systems connected to a Department of Transportation (DOT) network or operated by the Contractor for DOT, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOT's sensitive information that directly supports the mission of DOT. The term ''information technology,'' as used in this clause, means any equipment or interconnected system or subsystem of equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A–130. Examples of tasks that require security provisions include:

(1) Hosting of DOT e-Government sites or other IT operations;

(2) Acquisition, transmission or analysis of data owned by DOT with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to DOT general support systems/major applications at a level beyond that granted the general public, *e.g.* bypassing a firewall.

(b) The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal Laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002 and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOT policies and procedures, as they may be amended from time to time during the term of this contract that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) National Institute of Standards and Technology (NIST) Guidelines;

(3) Departmental Information Resource Management Manual (DIRMM) and associated guidelines; and

(4) DOT Order 1630.2B, Personnel Security Management

(c) Within 30 days after contract award, the contractor shall submit the IT Security Plan to the DOT Contracting Officer for acceptance. This plan shall be consistent with and further detail the approach contained in the offeror's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to the DOT for acceptance by the DOT Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation must be in accordance with DOT Order 1350.2, which is available from the Contracting Officer upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The contractor shall comply with the accepted accreditation documentation.

(e) On an annual basis, the contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) The contractor will ensure that the following banners are displayed on all DOT systems (both public and private) operated by the contractor prior to allowing anyone access to the system:

Government Warning

****WARNING**WARNING**WARNING****

Unauthorized access is a violation of U.S. Law and Department of Transportation policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOT information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

****WARNING**WARNING**WARNING****

(g) The contractor will ensure that the following banner is displayed on all DOT

systems that contain Privacy Act information operated by the contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Public Law 93–579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(h) Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOT or interconnected to a DOT network shall be screened at an appropriate level in accordance with DOT Order 1630.2B, Personnel Security Management, as it may be amended from time to time during the term of this contract.

(i) The Contractor shall ensure that its employees, in performance of the contract performing under this contract, receive annual IT security training in accordance with OMB Circular A–130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) The Contractor shall afford the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DOT data or to the function of information technology systems operated on behalf of DOT, and to preserve evidence of computer crime.

(k) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) The contractor shall immediately notify the contracting officer when an employee terminates employment that has access to DOT information systems or data.

(End of clause)

1252.239–71 Information technology security plan and accreditation.

As prescribed in (TAR) 48 CFR 1239.70, insert the following provision:

Information Technology Security Plan and Accreditation (APR 2005)

All offers submitted in response to this solicitation must address the approach for completing the security plan and accreditation requirements in TAR clause 1252.239–70.

(End of provision)

1252.242–70 Dissemination of information—educational institutions.

As prescribed in (TAR) 48 CFR 1242.7000(a), insert the following clause:

Dissemination of Information—Educational Institutions (OCT 1994)

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the ''Data Rights'' and ''Patent Rights'' clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

1252.242–71 Contractor testimony.

As prescribed in (TAR) 48 CFR 1242.7000(b), insert the following clause:

Contractor Testimony (OCT 1994)

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) Any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved, in advance, by the Contracting Officer or required by a judge in a final court order.

(End of clause)

1252.242–72 Dissemination of contract information.

As prescribed in (TAR) 48 CFR 1242.7000(c), insert the following clause:

Dissemination of Contract Information (OCT 1994)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

1252.242–73 Contracting officer's technical representative.

As prescribed in (TAR) 48 CFR 1242.7000(d), insert the following clause:

Contracting Officer's Technical Representative (Oct 1994)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (*i.e.*, contracts, contract modifications, *etc.*) that require the signature of the Contracting Officer.

(End of clause)

1252.245–70 Government property reports.

As prescribed in (TAR) 48 CFR 1245.505–70, insert the following clause:

Government Property Reports (Oct 1994)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43, Contractor Report of Government Property.

(End of clause)

Appendix to Part 1252—TAR Matrix

BILLING CODE 4910–62–P

TAR MATRIX

Key:

P or C =	Provision or Clause
BR =	Is Incorporation By Reference authorized?
UCF =	Uniform Contract Format Section, when applicable
R =	Required
A =	Required-When-Applicable
O =	Optional
X =	Revision

Principle type and/or purpose of contract:

FP SUP =	Fixed-Price Supply
CR SUP =	Cost-Reimbursement Supply
FP R&D =	Fixed-Price Research & Development
CR R&D =	Cost-Reimbursement Research & Development
FP SVC =	Fixed-Price Service
CR SVC =	Cost Reimbursement Service
FP CON =	Fixed-Price Construction
CR CON =	Cost Reimbursement Construction
T&M LH =	Time & Material/Labor Hours
LMV =	Leasing of Motor Vehicles
COM SVC =	Communication Services
DDR =	Dismantling, Demolition, or Removal of Improvements
A-E =	Architect-Engineering
FAC =	Facilities
IND DEL =	Indefinite Delivery
TRN =	Transportation
SP =	Small Purchases
UTL SVC =	Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.211-70 Index for Specifications	1211.204-70	C	YES	I	A	A	A				A	A				A		A	A		A	
1252.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause	1216.203-470	P	YES	M	A		A		A		A		A	A	A	A	A	A	A	A		A
1252.216-71 Determination of Award Fee	1216.406-70(a)	C	YES	I		A		A		A		A	A		A	A			A	A		
1252.216-72 Performance Evaluation Plan	1216.406-70(b)	C	YES	I		A		A		A		A	A		A	A			A	A		
1252.216-73 Distribution of Award Fee	1216.406-70(c)	C	YES	I		A		A		A		A	A		A	A			A	A		
1252.216-74 Settlement of Letter Contract	1216.603-4	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.217-70 Guarantee	1217.7000(a)	C	YES	I					A													
1252.217-71 Delivery & Shifting of Vessel	1217.7000(b)(i)	C	YES	I					A													
1252.217-72 Performance	1217.7000(b)(i)	C	YES	I					A													
1252.217-73 Inspection and Manner of Doing Work	1217.7000(b)(i)	C	YES	I					A													
1252.217-74 Subcontracts	1217.7000(b)(i)	C	YES	I					A													
1252.217-75 Lay Days	1217.7000(c)	C	YES	I					A													

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.217-76 Liability and Insurance	1217.7000(b)(ii)	C	YES	I					A													
1252.217-77 Title	1217.7000(b)(ii)	C	YES	I					A													
1252.217-78 Discharge of Liens	1217.7000(b)(ii)	C	YES	I					A													
1252.217-79 Delays	1217.7000(b)(ii)	C	YES	I					A													
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair	1217.7000(b)(ii)																					
1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Report	1219.708-70	C	YES	I					A													
1252.219-71 Section 8(a) Direct Award	1219.811-3(f)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.219-72 Notification of Competition Limited to Eligible 8(a) Concerns Alternate III	1219.811-3(d)(3)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work	1222.101-71(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility	1222.101-71(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-70 Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits	1223.303	C	YES	I					A	A	A	A	A			A		A			A	
1252.223-71 Accident and Fire Reporting	1223.7000(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223-72 Protection of Human Subjects	1223.7000(b)	C	YES	I	A	A	A	A	A	A			A						A		A	
1252.223-73 Seat Belt Use Policies and Programs	1223.7000(c)	C	YES	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R
1252.228-70 Loss of or Damage to Leased Aircraft	1228.306-70(a)	C	YES	I					A	A			A								A	
1252.228-71 Fair Market Value of Aircraft	1228.306-70(a)	C	YES	I					A	A			A								A	

Provision or Clause	Prescribed In	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.228-72 Risk and Indemnities	1228.306-70(a)	C	YES	I					A	A			A								A	
1252.228-73 Notification of Miller Act Payment Bond Protection	1228.106-470	C	YES	I							A	A										
1252.231-70 Date of Incurrence of Costs	1231.205-32(b)	C	YES	I		A		A		A		A										
1252.235-70 Research Misconduct	1235.7000	C	YES	I			R	R														
1252.236-70 Special Precautions for Work at Operating Airports	1236.570	C	YES	I							A	A	A			A	A	A			A	A
1252.237-70 Qualifications of Contractor Employees	1237.110(a)	C	YES	I					A	A					A							A
1252.237-71 Certification of Data	1213.7101 1237.7003(a)	P	YES	K					A	A					A				A		A	
1252.237-72 Prohibition on Advertising	1213.7101 1237.7003(a)	C	YES	I					A	A					A				A		A	
1252.237-73 Key Personnel	1237.110(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
1252.239-70 Security Requirements for Unclassified Information Technology Resources	1239.70	C	YES	I	A	A	A	A	A	A	A	A	A		A		A	A	A	A		A
1252.239-71 Information Technology Security Plan and Accreditation	1239.70	P	YES	L	A	A	A	A	A	A	A	A	A		A		A	A	A	A		A
1252.242-70 Dissemination of Information – Educational Institutions	1242.7000(a)	C	YES	I			A	A														
1252.242-71 Contractor Testimony	1242.7000(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242-72 Dissemination of Contract Information	1242.7000(c)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242-73 Contracting Officers Technical Representative	1242.7000(d)	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
1252.245-70 Government Property Reports	1245.505-70	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		

PART 1253—FORMS

Subpart 1253.2—Prescription of Forms

Subpart 1253.3—Illustration of Forms

Appendix to Subpart 1253.3

Authority: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

Subpart 1253.2—Prescription of Forms

1253.204 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (TAR) 48 CFR 1204.804–570:

(a) *Form DOT F 4220.4, Contractor's Release.* (*See* (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.4 is authorized for local reproduction and a copy is furnished for this purpose in the Appendix to subpart 1253.3.

(b) *Form DOT 4220.45, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* (*See* (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.45 is authorized for local reproduction and a copy is furnished for this purpose in the Appendix to subpart 1253.3.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement.* (See (TAR) 48 CFR 1204.804–570.) Form DOT F 4220.46 is authorized for local reproduction and a copy is furnished for this purpose in the Appendix to subpart 1253.3.

(d) *DD Form 882, Report of Inventions and Subcontracts.* (See (TAR) 48 CFR 1204.804–570.) DD Form 882 can be found at *http://www.aro.army.mil/forms/d882.pdf.*

1253.222 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (TAR) 48 CFR 1222.406–9:

Form DOT F 4220.7, Employee Claim for Wage Restitution. (See (TAR) 48 CFR 1222.406–9(c)(1).) Form DOT F 4220.7 is authorized for local reproduction and a copy is furnished for this purpose in the Appendix to for subpart 1253.3.

1253.227–70 Conveyance of invention rights acquired by the Government.

The following form is prescribed as a means for contractors to report inventions made in the course of contract performance, as specified in 1227.305–4:

DD Form 882, Report of Inventions and Subcontracts. DD Form 882 can be found at *http://www.aro.army.mil/forms/d882.pdf.*

1253.245–70 Report of Government property.

The following form is prescribed for use by contractors to report Government property, as specified in (TAR) 48 CFR 1245.505–1470:

Form DOT F 4220.43, Contractor Report of Government Property. See 1245.505–1470.) Form DOT F 4220.43 is authorized for local reproduction and a copy is furnished for this purpose in the Appendix to subpart 1253.3.

Subpart 1253.3—Illustration of Forms

1253.303 Agency forms.

This subpart contains illustrations of DOT and other agency forms specified by the TAR for use in DOT acquisitions.

Form Name	Form Number	Adobe .pdf files	Microsoft Word files
Contractor's Release Form	4220.4	4220_4.pdf	4220_4.doc
Employee Claim for Wage Restitution	4220.7	4220_7.pdf	4220_7.doc
Contractor Report of Government Property	4220.43	4220_43.pdf	4220_43.doc
Contractor's Assignment of Refunds, Rebates, Credits, and other Amounts.	4220.45	4220_45.pdf	4220_45.doc
Cumulative Claim and Reconciliation Statement	4220.46	4220_46.pdf	4220_46.doc

Appendix to Subpart 1253.3

DEPARTMENT OF TRANSPORTATION
CONTRACTOR'S RELEASE

CONTRACTOR (Name and Address)	**ENTER SUM OF TOTAL OF AMOUNTS PAID AND PAYABLE**
CONTRACT NO.	**$**

Pursuant to the terms of the above numbered contract and in consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None")

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all provisions of the said contract, provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESSES WHEREOF, this release has been executed this _____ day of _____, 19 ___.

WITNESSES

_____ (Contractor)

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required but the below statement must be completed.

I, _____, am the _____ secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____
Signature

DEPARTMENT OF TRANSPORTATION
EMPLOYEE CLAIM FOR WAGE RESTITUTION

TO: The Government Accountability Office Claims Division Washington, DC 20548	**CONTRACT NUMBER**
	DATE OF CLAIM
	EMPLOYEE'S FULL NAME
	SSN:

I hereby make claim for payment of unpaid wages due me in the amount of $_____

as an employee of _____ performing work
(Name of Contractor and/or Subcontractor)

under the above number at _____
(location of work)

_____. I was employed as

_____ during the period from _____
(job title) *(month/day/year)*

to _____.
(month/day/year)

This claim constitutes the total amount claimed due and unpaid for the period of employment indicated.

ADDRESS OF EMPLOYEE	**SIGNATURE OF EMPLOYEE**

DEPARTMENT OF TRANSPORTATION **CONTRACTOR REPORT OF GOVERNMENT PROPERTY**	**OMB Control No. 2105-0517** **Expiration Date: January 31, 2007**

This collection of information is mandatory and will be used to fulfill the requirements of the Transportation Acquisition Regulation (TAR). Public reporting burden is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Information and Regulatory Offices, 725 17th Street, NW, Washington, DC 20503. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 2105-0517.

1. Contract Number: _____

2. Report Period Ending: _____

3. Contractor (Name and Address)	**4. Contracting Office (Name and Address)**

5. Name and location of Government-Owned, Contractor-Operated Plant (if applicable)

6. Any Government property located at a subcontractor's plant? _____ Yes _____No. If yes, give the name and address of the subcontractor(s) on an attached sheet to this report.

7. Date contractor's property control system approved? _____

8. Approved by whom? _____
Name of Agency/Office

	Starting Balance				**Ending Balance**	
9. Property Class (See FAR 45.5)	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)	Items Added in $	Items Deleted in $	Total Acquisition Cost (in dollars)	Total Quantity (in acres or units)
a. Land & Rights Therein						
b. Other Real Property						
c. Plant Equipment						
d. Special Test Equipment						
e. Special Tooling						
f. Materials in Stock (when total value exceeds $50,000)						

NOTE: This report shall include all Government property (i.e., property furnished by the Government, or acquired or fabricated by the contractor or subcontractors). By signature hereon, the contractor's property administrator declares that the report was prepared from the contractor's records that are required by FAR 45.5.

10. Typed Name of Contractor Property Administrator	**11. Signature and Date**

DEPARTMENT OF TRANSPORTATION
CONTRACTOR ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, _____ (hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over the release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits or other amounts (including any interest thereon) due or which may become due, and to promptly forward to the UNITED STATES TREASURER checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection with; and to permit the Government to represent it at any hearing, trial, or other proceeding arising out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, _____.

BY: _____
(CONTRACTOR)

By signature hereon, I, _____, declare that I am the _____ (official title) of the corporation named as Contractor in the foregoing assignment; that _____ signed said assignment on behalf of the Contractor was then _____ of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____
Signature

DEPARTMENT OF TRANSPORTATION
CUMULATIVE CLAIM AND RECONCILIATION STATEMENT

1. Name of Contractor : _____
2. Address of Contractor: _____
_____
_____
3. Contract No. _____
4. Delivery/Task Order No. _____

5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:

a. Direct Labor.....	$	_____
b. Direct Material.....	$	_____
c. Other Direct Costs.....	$	_____
d. Overhead.....	$	_____
e. G&A.....	$	_____
f. Subcontract Cost.....	$	_____
g. Total Costs (5a through 5f).....	$	_____
h. Fixed Fee.....	$	_____
i. Total Amount Claimed.....	$	_____

6. Total amount due under the above numbered contract, delivery order, task order is as follows:

a. Total Amount Claimed.....	$	_____
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____	$	_____
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet).....	$	_____
d. Total Amount Due.....	$	_____

I, _____ (Full Name), as the _____ (Title)

to the best of my knowledge and belief, the above statements are correct in accordance with the records of the contractor.

_____

(Signature)

[FR Doc. 05–1506 Filed 2–4–05; 8:45 am]
BILLING CODE 4910–62–C

Federal Register

Monday,
February 7, 2005

Part III

The President

Federal Register
Vol. 70, No. 24
Monday, February 7, 2005

Presidential Documents

Title 3—

The President

Proclamation 7866 of February 1, 2005

American Heart Month, 2005

By the President of the United States of America

A Proclamation

The miracles of modern medicine offer hope to those affected by heart disease, yet there are also simple measures that Americans can take to help prevent the disease. During American Heart Month, I encourage all Americans to take action to help reduce their risk and increase awareness of heart disease.

The steps to a healthy heart include preventing and controlling factors that can lead to heart disease—smoking, high blood pressure, high blood cholesterol, physical inactivity, obesity, and diabetes. By avoiding tobacco, limiting consumption of alcohol, exercising regularly, eating a nutritious diet, and maintaining a healthy weight, Americans can substantially reduce their risk of developing cardiovascular disease.

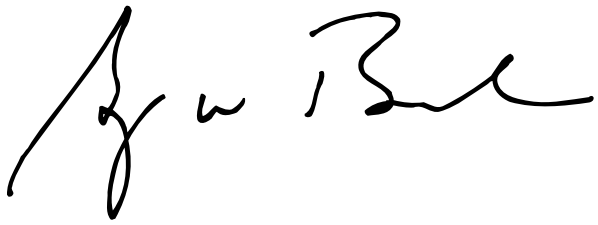
I also urge citizens to get routine preventative screenings and consult with their doctors. Through these commonsense steps, we can save many of the lives we might otherwise lose each year to heart disease.

Although heart disease is often associated with men, it is the leading cause of death for American women: Nearly 500,000 American women die from cardiovascular disease each year. The National Heart, Lung, and Blood Institute—part of the National Institutes of Health at the Department of Health and Human Services—and other national organizations have launched a national campaign called ''The Heart Truth'' to educate women about heart disease and to encourage them to make their health a priority. The symbol of ''The Heart Truth'' campaign is the red dress, which reminds women to talk with their doctors about heart disease and to make healthy choices. In addition, the American Heart Association has launched the ''Go Red For Women'' campaign to reach out to more women across our country. By continuing to raise public awareness about this deadly disease, we can help all our citizens lead healthier lives.

In recognition of the importance of the ongoing fight against heart disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim February 2005 as American Heart Month, and I invite all Americans to participate in National Wear Red Day by wearing a red dress, shirt, or tie on February 4, 2005. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in our continuing commitment to fighting heart disease.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–2439
Filed 2–4–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7867 of February 1, 2005

Centennial of the Forest Service, 2005

By the President of the United States of America

A Proclamation

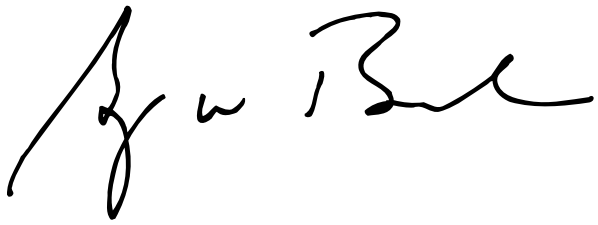
In 2005, the Department of Agriculture's Forest Service celebrates a century of service to our Nation. After President Theodore Roosevelt established the Forest Service as part of the Department of Agriculture in 1905, Secretary of Agriculture James Wilson wrote to the First Chief of the Forest Service, Forester Gifford Pinchot, that ''all land is to be devoted to its most productive use for the permanent good of the whole people.'' The Forest Service has now upheld this noble charge for 100 years, and America's forests remain vibrant because of the hard work and dedication of our foresters.

Beyond serving as places for recreation, our forests are also sources of paper products, building materials, chemicals, and many other resources that drive our economy. Over the last century, the Forest Service has combined this ethic of good stewardship with sound science and a spirit of innovation to cultivate and sustain our forests in ways that benefit our entire society.

Today, Americans continue to be responsible stewards of national forests and grasslands. Through the commonsense management approach of my Healthy Forests Initiative, the Forest Service is working with State and local governments, tribes, and other Federal agencies to help prevent destructive wildfires, return forests to a healthier, natural condition, and maintain a full range of forest types. The Forest Service is also providing important work, education, and job training to citizens in need. This commitment to ''Caring for the Land and Serving People'' contributes to our country's success in conserving our environment and ensuring that our natural resources remain sources of pride for our citizens, our communities, and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 1, 2005, as the Centennial of the Forest Service of the Department of Agriculture. I call upon the people of the United States to recognize this anniversary with appropriate programs, ceremonies, and activities in honor of the Forest Service's contributions to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–2326
Filed 2–4–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

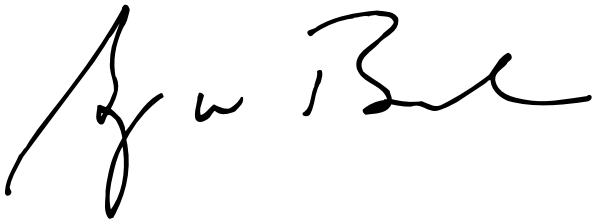
Presidential Determination No. 2005–19 of January 27, 2005

Determination to Authorize a Drawdown for Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Public Law 107–327, as amended) and section 506 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, I hereby direct the drawdown of up to $88.5 million of defense articles, defense services, and military education and training from the Department of Defense for the Government of Afghanistan.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 27, 2005.

[FR Doc. 05–2440
Filed 2–4–05; 8:45 am]
Billing code 4710–10–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual

pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–052–00004–3)	60.00	Jan. 1, 2004
700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
1200–End	(869–052–00006–0)	61.00	Jan. 1, 2004
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–052–00008–6)	44.00	Jan. 1, 2004
27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–052–00011–6)	62.00	Jan. 1, 2004
300–399	(869–052–00012–4)	46.00	Jan. 1, 2004
400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
700–899	(869–052–00014–1)	43.00	Jan. 1, 2004
900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–052–00017–5)	61.00	Jan. 1, 2004
1600–1899	(869–052–00018–3)	64.00	Jan. 1, 2004
1900–1939	(869–052–00019–1)	31.00	Jan. 1, 2004
1940–1949	(869–052–00020–5)	50.00	Jan. 1, 2004
1950–1999	(869–052–00021–3)	46.00	Jan. 1, 2004
2000–End	(869–052–00022–1)	50.00	Jan. 1, 2004
8	(869–052–00023–0)	63.00	Jan. 1, 2004
9 Parts:			
1–199	(869–052–00024–8)	61.00	Jan. 1, 2004
200–End	(869–052–00025–6)	58.00	Jan. 1, 2004
10 Parts:			
1–50	(869–052–00026–4)	61.00	Jan. 1, 2004
51–199	(869–052–00027–2)	58.00	Jan. 1, 2004
200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–052–00029–9)	62.00	Jan. 1, 2004
11	(869–052–00030–2)	41.00	Feb. 3, 2004
12 Parts:			
1–199	(869–052–00031–1)	34.00	Jan. 1, 2004
200–219	(869–052–00032–9)	37.00	Jan. 1, 2004
220–299	(869–052–00033–7)	61.00	Jan. 1, 2004
300–499	(869–052–00034–5)	47.00	Jan. 1, 2004
500–599	(869–052–00035–3)	39.00	Jan. 1, 2004
600–899	(869–052–00036–1)	56.00	Jan. 1, 2004
900–End	(869–052–00037–0)	50.00	Jan. 1, 2004
13	(869–052–00038–8)	55.00	Jan. 1, 2004
14 Parts:			
1–59	(869–052–00039–6)	63.00	Jan. 1, 2004
60–139	(869–052–00040–0)	61.00	Jan. 1, 2004
140–199	(869–052–00041–8)	30.00	Jan. 1, 2004
200–1199	(869–052–00042–6)	50.00	Jan. 1, 2004
1200–End	(869–052–00043–4)	45.00	Jan. 1, 2004
15 Parts:			
0–299	(869–052–00044–2)	40.00	Jan. 1, 2004
300–799	(869–052–00045–1)	60.00	Jan. 1, 2004
800–End	(869–052–00046–9)	42.00	Jan. 1, 2004
16 Parts:			
0–999	(869–052–00047–7)	50.00	Jan. 1, 2004
1000–End	(869–052–00048–5)	60.00	Jan. 1, 2004
17 Parts:			
1–199	(869–052–00050–7)	50.00	Apr. 1, 2004
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–052–00055–8)	61.00	Apr. 1, 2004
141–199	(869–052–00056–6)	58.00	Apr. 1, 2004
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
1–399	(869–052–00058–2)	50.00	Apr. 1, 2004
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00062–1)	49.00	Apr. 1, 2004
170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
200–299	(869–052–00064–7)	17.00	Apr. 1, 2004
300–499	(869–052–00065–5)	31.00	Apr. 1, 2004
500–599	(869–052–00066–3)	47.00	Apr. 1, 2004
600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–052–00073–6)	60.00	Apr. 1, 2004
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–052–00076–1)	61.00	Apr. 1, 2004
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–052–00081–7)	60.00	Apr. 1, 2004
§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–052–00087–6)	61.00	Apr. 1, 2004
§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
§§ 1.1001–1.1400	(869–052–00089–2)	61.00	Apr. 1, 2004
§§ 1.1401–1.1503–2A	(869–052–00090–6)	55.00	Apr. 1, 2004
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–052–00095–7)	41.00	Apr. 1, 2004
300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
500–599	(869–052–00097–3)	12.00	[5]Apr. 1, 2004
600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
*80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
*17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.